

No. 12692

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United States  
Court of Appeals  
for the Ninth Circuit.

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PALOMAS LAND AND CATTLE COMPANY,  
a Corporation,

Appellant,

vs.

ARTHUR D. BALDWIN, as Surviving Trustee  
Under a Certain Agreement of Trust Dated  
October 29, 1943; LOUIS A. SCOTT, JOHN L.  
RASBERRY and JAMES F. HULSE, Part-  
ners Doing Business Under the Firm Name and  
Style of Burges, Scott, Rasberry & Hulse.

Appellees.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California,  
Central Division.

FILED  
JAN 23 1951

PAUL E. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

ROLAND RICH WOOLLEY,  
DAVID MELLINKOFF,  
649 S. Olive St.,  
Los Angeles 14, Calif.

For Appellee Arthur D. Baldwin as Trustee, etc.:

LAWLER, FELIX & HALL,  
WM. T. COFFIN,  
EDWARD T. BUTLER,  
800 Standard Oil Bldg.,  
Los Angeles 15, Calif.

For Appellees Louis A. Scott, et al.:

OVERTON, LYMAN, PRINCE & VER-  
MILLE,  
CARL J. SCHUCK,  
733 Roosevelt Bldg.,  
Los Angeles 17, Calif.

In the District Court of the United States, Southern  
District of California, Central Division

No. 11340-C

(Civil)

ARTHUR D. BALDWIN, as Surviving Trustee  
Under a Certain Agreement of Trust Dated  
October 29, 1943,

Plaintiff,

vs.

PALOMAS LAND AND CATTLE COMPANY,  
a Corporation, and LOUIS A. SCOTT, JOHN  
L. RASBERRY and JAMES F. HULSE,  
Partners Doing Business Under the Firm Name  
and Style of Burges, Scott, Rasberry & Hulse,

Defendants.

### COMPLAINT FOR INTERPLEADER

Plaintiff complains of defendants and alleges:

#### I.

This is an action of interpleader brought under Section 1335 of Title 28 of the United States Code (formerly Subdivision 26 of Section 41 of Title 28 of said Code). Plaintiff resides in the County of Cuyahoga, State of Ohio, and is a citizen of said State. Defendant Palomas Land and Cattle Company (hereinafter for the sake of brevity sometimes called "defendant Palomas") is a corporation organized and existing under and by virtue of the laws of the State [2\*] of California, has its principal

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.



office in the County of Los Angeles in said State and is a citizen of said State of California. Defendants Louis A. Scott, John L. Rasberry and James F. Hulse are partners engaged in the practice of law in the City of El Paso, State of Texas, under the firm name and style of Burges, Scott, Rasberry & Hulse; said defendants (hereinafter for the sake of brevity sometimes collectively called "defendant law firm") and each of them are citizens of said State of Texas. The amount in controversy exceeds \$5,000.00 as hereinafter more fully appears.

## II.

On October 29, 1943, defendant Palomas, Security-First National Bank of Los Angeles, a national banking association (hereinafter called "Security Bank"), plaintiff, James R. Garfield and Clare M. Vrooman, the latter two being now deceased, made and entered into a certain trust agreement under the terms of which defendant Palomas and Security Bank assigned, transferred and set over to plaintiff and the said James R. Garfield and Clare M. Vrooman, as Trustees, all their right, title and interest in and to a certain award of the American-Mexican Claims Commission in favor of defendant Palomas. Under the terms of said trust agreement, said Trustees were to collect, receive and receipt for all sums paid or payable on said award and to disburse the sums collected as follows:

- A 7/19ths share to defendant Palomas;
- A 7/19th share to Security Bank;
- A 5/19ths share to said Trustees.

## III.

Said James R. Garfield and Clare M. Vrooman as aforesaid are now deceased and plaintiff is the successor to the interest of said James R. Garfield and Clare M. Vrooman as said Trustees and is now the sole Trustee under said trust agreement. [3]

## IV.

Defendant law firm has notified plaintiff that by virtue of a letter agreement dated August 6, 1943, between it and defendant Palomas whereby the latter employed defendant law firm to render legal services, defendant law firm is entitled to receive, and it has demanded that plaintiff as said Trustee pay to it, 15% of the sums payable to defendant Palomas under the terms of said trust agreement. Defendant Palomas has notified plaintiff that defendant law firm is not entitled to 15% or any other part of the sums payable to defendant Palomas under the terms of said trust agreement and has demanded that plaintiff as said Trustee pay to defendant Palomas all of said sums, to wit: a 7/19ths share of collections made on said award.

## V.

On or about March 13, 1950, plaintiff as said Trustee collected and received from the Treasurer of the United States the sum of \$99,308.70 representing a 6.2% installment upon said award of said American-Mexican Claims Commission. On March 14, 1950, plaintiff disbursed to Security Bank

the sum of \$36,587.42 as a 7/19ths share of the sum so collected and disbursed to himself as said Trustee the sum of \$26,133.86 as a 5/19ths share of the sum so collected. On the same day, plaintiff disbursed to defendant Palomas the sum of \$31,099.31 as a 7/19ths share of the sum so collected minus 15% of said share; that of the sum so collected there remains in the hands of plaintiff as said Trustee the sum of \$5,488.11, the same being 15% of a 7/19ths share of \$99,308.70 and the amount conflicting claims to which are asserted as aforesaid by defendant Palomas, on the one hand, and by defendant law firm, on the other hand. [4]

## VI.

Plaintiff as said Trustee or otherwise does not now have or claim, nor has he ever had or claimed, any right, title or interest in or to that part of the amount collected by him on account of said award as remains undisbursed, to-wit: said sum of \$5,488.11, and desires to pay the same to the person or persons lawfully entitled thereto. The conflicting claims to said sum being asserted as aforesaid by defendant Palomas and defendant law firm are asserted by them in good faith and plaintiff cannot safely determine for himself which of said claims are right and lawful and cannot safely make payment of all or any part of said sum to either defendant Palomas or to defendant law firm, and, under the circumstances, is in danger of being subjected to a multiplicity of claims and actions on a single liability. In justice and equity plaintiff

should not be compelled to become involved in the disputes of said claimants and said claimants should be required to litigate and settle their conflicting claims among themselves.

## VII.

This action has been brought by plaintiff without collusion as respects defendants or any of them and for the sole purpose of interpleading defendants and compelling them, without harassing or annoying plaintiff or involving plaintiff in their disputes or putting plaintiff to unnecessary costs, to litigate their conflicting claims among themselves to the end that plaintiff may, without the risk of being compelled to pay said sum of \$5,488.11 more than once or being subjected to a multiplicity of suits, perform his obligations as Trustee under said trust agreement of October 29, 1943. Contemporaneously with the commencement of this action plaintiff is paying into the registry of this Court said sum of \$5,488.11 to abide the judgment of this Court. [5]

## VIII.

It was and is necessary for plaintiff to institute this action of interpleader for the purpose aforesaid and in order to avoid a multiplicity of suits and to avoid unnecessary costs, attorneys' fees and expenses of suit and to prevent irreparable damage to plaintiff. In order to institute this action, it was necessary for plaintiff to employ, and he has employed, the attorneys now appearing in his behalf to

prepare this complaint for interpleader and to file and prosecute this action and plaintiff has become and is liable to pay said attorneys reasonable compensation for their services. Liability for the compensation of said attorneys and all other expenses incident to the institution and prosecution of this action has been incurred by plaintiff in good faith and was necessarily incurred by reason of the conflicting claims asserted by defendants as aforesaid to said sum of \$5,488.11.

Wherefore, plaintiff prays:

1. That defendant Palomas Land and Cattle Company and defendants Louis A. Scott, John L. Rasberry and James F. Hulse, partners doing business under the firm name and style of Burges, Scott, Rasberry & Hulse, be required to interplead, litigate and settle between themselves their claims and rights to the money collected and undisbursed by plaintiff as said Trustee and herewith deposited into the registry of this Court as aforesaid, to wit: said sum of \$5,488.11;

2. That plaintiff be released and discharged from all further liability to defendants or any of them on account of the aforesaid collection made on March 13, 1950, by plaintiff as said Trustee from the Treasurer of the United States on account of said award; [6]

3. That the Court allow to plaintiff a reasonable sum as attorneys' fees incurred in the preparation of this complaint and in the prosecution of this action and that the sum so allowed, together with

plaintiff's costs and expenses herein, be made a lien upon said money so deposited in the registry of this Court;

4. That the Court determine the validity and priority of the respective rights and claims of defendants and direct the disposition of said deposited money which remains after payment therefrom of plaintiff's costs, expenses and attorneys' fees;

5. That a temporary restraining order and injunction be issued against defendants and each of them restraining and enjoining defendants and each of them from taking, maintaining or prosecuting any proceeding in any State or Federal Court based upon any of the claims of defendants to said money so deposited in the registry of this Court;

6. That upon the return date specified in said temporary restraining order and injunction, the same be made permanent; and

7. That plaintiff have such other and further relief as to the Court shall appear meet and proper in the premises.

LAWLER, FELIX & HALL,

/s/ WM. T. COFFIN,

/s/ EDWARD T. BUTLER,

Attorneys for Plaintiff. [7]



State of Ohio,  
County of Cuyahoga—ss.

Arthur D. Baldwin, being first duly sworn deposes and says:

That he is the plaintiff in the above-entitled action and is duly authorized to make this verification as Trustee under a certain agreement of trust dated October 29, 1943; that he has read the foregoing Complaint for Interpleader and knows the contents thereof and that the same are true of his own knowledge except as to matters which are therein alleged upon information and belief, and as to those matters that he believes it to be true.

/s/ ARTHUR D. BALDWIN.

Subscribed and Sworn to before me this 28th day of March, 1950.

[Seal] /s/ FRED C. BALDWIN,  
Notary Public in and for Said  
County and State.

My Commission Expires July 31, 1952.

Receipt of copy acknowledged.

[Endorsed]: Filed March 30, 1950. [8]

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[Title of District Court and Cause.]

TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE

Plaintiff Arthur D. Baldwin, having filed herein his Complaint for Interpleader, and having de-

posited in the registry of this Court the sum of \$5,488.11 to abide the judgment thereof; and

It Appearing to this Court that plaintiff is a resident of the County of Cuyahoga, State of Ohio, and is a citizen of said State; that defendant Palomas Land and Cattle Company (hereinafter sometimes called "defendant Palomas"), is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office in the County of Los Angeles, State of California, and is a citizen of said State; that defendants [9] Louis A. Scott, John L. Rasberry and James F. Hulse are partners engaged in the practice of law in the City of El Paso, State of Texas, under the firm name and style of Burges, Scott, Rasberry & Hulse, and that said defendants (hereinafter sometimes collectively called "defendant law firm"), and each of them are citizens of said State;

And It Further Appearing to this Court that plaintiff is the surviving Trustee under a certain Trust Agreement by virtue of which plaintiff as said Trustee on or about the 13th day of March, 1950, collected and received from the Treasurer of the United States certain moneys on account of a certain award of the American-Mexican Claims Commission in favor of defendant Palomas; that said moneys so received and collected have been disbursed by plaintiff as said Trustee in accordance with said Trust Agreement, excepting for said sum of \$5,488.11, deposited as aforesaid by plaintiff; that defendant Palomas and defendant law firm



have asserted and now assert conflicting claims to said sum of \$5,488.11; that plaintiff as said Trustee or otherwise has no right, title or interest in said sum of \$5,488.11 except to pay said sum to the person or persons lawfully entitled thereto; that plaintiff can not safely determine for himself which of said conflicting claims are right and lawful and cannot safely make payment of all or any part of said sum of \$5,488.11 to either defendant Palomas or to defendant law firm, and that plaintiff is in danger of being subjected to a multiplicity of claims and actions on a single liability;

Now, Therefore, It Is Hereby Ordered Adjudged and Decreed as follows:

1. That defendant Palomas Land and Cattle Company and defendants Louis A. Scott, John L. Rasberry, and James F. Hulse, [10] partners doing business under the firm name and style of Burges, Scott, Rasberry & Hulse, and each of their agents, attorneys, servants and representatives be and they hereby are and each of them hereby is enjoined and restrained until the further order of this Court from taking, maintaining or prosecuting any proceeding in any State or Federal Court based upon any of the claims of defendants to the said sum of \$5,488.11 deposited by plaintiff in the registry of this Court;

2. That defendant Palomas Land and Cattle Company and defendants Louis A. Scott, John L. Rasberry, and James F. Hulse, partners doing business under the firm name and style of Burges, Scott,

Rasberry & Hulse, are and each of them is hereby required to appear in this Court at Court Room No. 3 of this Court in the Federal Building, Temple and Main Streets, in the City of Los Angeles, County of Los Angeles, State of California, on the 8th day of May, 1950, at the hour of 10 o'clock a.m. of said day, then and there to show cause if any they have:

a. Why the Order set forth in paragraph 1 above should not be made permanent;

b. Why said defendants should not be required to interplead, litigate and settle between themselves their claims and rights to said sum of \$5,488.11;

c. Why plaintiff should not be released and discharged from all further liability to defendants or any of them on account of the aforesaid moneys collected by plaintiff as said Trustee as aforesaid on or about the 13th day of March, 1950;

d. Why plaintiff should not be allowed a reasonable sum as attorneys' fees incurred in the preparation of his complaint herein and in the prosecution of this action, and that the sum so allowed, together with plaintiff's costs and expenses herein, be [11] made a lien upon said money so deposited in the registry of this Court;

e. Why this Court should not determine the validity and priority of the respective rights and claims of defendants, and direct the disposition of said deposited money which remains after payment

therefrom of plaintiff's costs, expenses and attorneys' fees;

3. That a copy of this Temporary Restraining Order and Order to Show Cause, together with a copy of the Complaint herein, be served upon the defendant Palomas Land and Cattle Company, and the defendants Louis A. Scott, John L. Rasberry and James F. Hulse, partners doing business under the firm name and style of Burges, Scott, Rasberry & Hulse, by the United States Marshals of the districts wherein said defendants respectively reside or may be found.

Dated this 30th day of March, 1950.

/s/ JAMES M. CARTER,  
District Judge.

[Endorsed]: Filed March 30, 1950. [12]

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[Title of District Court and Cause.]

#### NOTICE OF MOTION TO DISMISS

To the Plaintiff Above Named and Lawler, Felix & Hall, Wm. T. Coffin and Edward T. Butler, Esqs., His Attorneys, and to the Defendants Louis A. Scott, John L. Rasberry and James F. Hulse, Partners Doing Business Under the Firm Name and Style of Burges, Scott, Rasberry & Hulse, and to Overton, Lyman, Prince, and Vermille and Carl J. Schuck, Esqs., Their Attorneys:

You and Each of You Will Please Take Notice that at the hour of 10:00 a.m. on the 15th day of May, 1950, in Court Room No. 3 of the above-entitled Court at the Federal Building, Temple and Main Streets, in the City and County of Los Angeles, State of California, or as soon thereafter as counsel can be heard, the defendant Palomas Land and Cattle Company, a Corporation, will move the above-entitled Court to dismiss the within action because the complaint fails to state a claim against this defendants upon which relief can be granted.

Said motion will be made upon all the records and files [19] in the above-entitled action, the foregoing Notice of Motion and the Memorandum of Points and Authorities accompanying this Notice.

Dated this 4th day of May, 1950.

ROLAND RICH WOOLLEY and  
DAVID MELLINKOFF,

By /s/ DAVID MELLINKOFF,  
Attorneys for Defendant Palomas Land and Cattle  
Company.

[Endorsed]: Filed May 4, 1950. [20]

[Title of District Court and Cause.]

AFFIDAVIT OF ROLAND RICH WOOLLEY  
IN OPPOSITION TO ORDER TO SHOW  
CAUSE

State of California,  
County of Los Angeles—ss.

Roland Rich Woolley, being first duly sworn, deposes and says that he is one of the attorneys for the defendant Palomas Land and Cattle Company, a California Corporation;

That he has heretofore requested the plaintiff Trustee to send to him any documents or other writings evidencing the asserted claims of the other defendants in the above-entitled action, upon which the refusal of said plaintiff Trustee to pay Palomas Land and Cattle Company the monies to which it is entitled in accordance with the provisions of the Trust Agreement mentioned in the complaint on file herein is based;

That pursuant to such request, the only document or other writing furnished to affiant is an alleged letter agreement dated August 6, 1943, a true copy of which is attached hereto.

/s/ ROLAND RICH WOOLLEY.

Subscribed and sworn to before me this 5th day of May, 1950.

[Seal] /s/ WILLIAM J. CLAYTON,  
Notary Public in and for  
Said County and State.

My Commission expires April 12, 1954. [25]

“August 6, 1943.

Burges, Burges, Scott, Rasberry & Hulse,  
El Paso, Texas.

Confirming our verbal agreement, the undersigned hereby employs you to prosecute and assert the claims of undersigned to any award made to undersigned under the provisions of the convention between the United States of America and Mexico, dated November 19, 1941, and Public Law 814 adopted by the 77th Congress of the United States, and to defend any claims asserted to any such award by Ben Williams, et al., and the Security-First National Bank of Los Angeles. Undersigned agrees to pay you for any services rendered in this connection as follows:

1. Should the matters in controversy be settled by agreement prior to the filing of any suit by undersigned or the parties named, you shall receive 5% of any sums realized by undersigned or either of them.

2. Should the matters in controversy be disposed of by litigation or settled by agreement after the filing of any suit or legal procedure by undersigned or the other claimants mentioned, you shall receive 15% of all sums realized by undersigned or either of them.

3. It is understood that in arriving at your fee, any sum deducted from the award by the law firm of Garfield, Baldwin & Vrooman or ultimately allowed them for the prosecution of such claims before the Mexican Claims Commission shall not be



taken into consideration in arriving at the sums realized by undersigned.

4. It is also understood that undersigned shall pay all expenses incurred by you in the handling of this matter, including traveling expenses, telephone and telegraph bills, etc., and the fees of any out of state attorney or attorneys whom you may deem it necessary to employ for the purpose of prosecuting or defending any litigation instituted outside the State of Texas to protect the undersigned. [26]

Yours very truly,

PALOMAS LAND AND CATTLE COMPANY,

By /s/ MARSHALL B. STEPHENSON,  
President.

HUECO CATTLE COMPANY,

By /s/ MARSHALL B. STEPHENSON,  
President.

Approved:

BURGES, BURGES, SCOTT,  
RASBERRY & HULSE,

By /s/ J. L. RASBERRY.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 8, 1950.

[Title of District Court and Cause.]

AFFIDAVIT OF LETHA L. METCALF IN OP-  
POSITION TO ORDER TO SHOW CAUSE

State of California,  
County of Los Angeles—ss.

Letha L. Metcalf, being first duly sworn, deposes and says that she is the President of the Palomas Land and Cattle Company, a California Corporation, which corporation is named as the defendant in the above-entitled action, that attached hereto and made a part hereof, is a true copy of the Trust Agreement dated October 29, 1943, mentioned in plaintiff's complaint on file herein;

Affiant hereby makes reference to Paragraph I of said Trust Agreement and particularly to the portion thereof reading as follows:

“The Trustees shall execute this Trust without charge. No expenses shall be incurred without first obtaining the written approval of Palomas and Bank”;

That in connection with the foregoing, affiant states [28] the Palomas Land and Cattle Company never gave any consent and never gave any approval, written or otherwise to the filing, prosecution or maintenance of the within action by the above-entitled plaintiff or any one else; and affiant further states that Palomas Land and Cattle Company does not now consent to nor approve of said action, that said action is unnecessary, unauthorized and a breach of the aforesaid Trust Agreement;



That said plaintiff Trustee is indebted to Palomas Land and Cattle Company in the sum of Five Thousand Four Hundred Eighty-eight Dollars and Eleven Cents (\$5,488.11), plus legal interest thereon from on or about the 13th day of March, 1950, and that in addition thereto plaintiff Trustee is indebted to Palomas Land and Cattle Company for a sum in excess of Twenty-five Thousand Dollars (\$25,000.00) on account of monies of said Trust similarly wrongfully withheld from Palomas Land and Cattle Company, and paid out by said Trustee without the consent of Palomas Land and Cattle Company, and in violation of the terms of said Trust. That unless sooner removed as Trustee, said Trustee will become further indebted to Palomas Land and Cattle Company on account of future installments on the award of the American-Mexican Claims Commission, mentioned in said complaint. That Palomas Land and Cattle Company has claims against the other defendants arising out of and in connection with the alleged Agreement of August 6, 1943, over and above the claim mentioned in the complaint; that if Palomas Land and Cattle Company is forced to litigate piecemeal with the other defendants and without the presence of the plaintiff, Palomas Land and Cattle Company will be driven to a multiplicity of actions at great cost and expense.

That defendant Palomas Land and Cattle Company has never assigned to, transferred to or given a lien to these other defendants upon the whole or any part of the monies payable to defendant Palo-

mas Land and Cattle Company pursuant to said Trust Agreement.

/s/ LETHA L. METCALF.

Subscribed and sworn to before me, this 4th day of May, 1950.

[Seal] /s/ WILLIAM J. CLAYTON,  
Notary Public in and for  
Said County and State.

My Commission expires April 12, 1954. [31]

This Agreement made as of the 29th day of October, 1943, by and between Palomas Land and Cattle Company, a California corporation, as Party of the First Part, hereinafter called "Palomas," Security-First National Bank of Los Angeles, a National Banking Association, as Party of the Second Part, hereinafter called "Bank," and James R. Garfield, Arthur D. Baldwin and Clare M. Vrooman, of Cleveland, Ohio, individually and as partners engaged in the practice of law under the firm name of Garfield, Baldwin & Vrooman, collectively as Party of the Third Part, hereinafter for convenience sometimes referred to as "Trustees,"

Witnesseth, That Whereas:

1. Under date of August 26, 1943, pursuant to the provisions of the Settlement of Mexican Claims Act of 1942, the American Mexican Claims Commission entered an award in favor of Palomas in the amount of \$1,686,056, and certified such award to the Secretary of the Treasury for payment to

Palomas in accordance with the provisions of said Act of 1942, said award having been made on that certain claim of Palomas theretofore pending before the General Claims Commission of the United States of America and United Mexican States under Docket No. 2067 of that Commission;

2. The parties to this agreement assert conflicting claims to said award; the conflicting claims of Palomas and Bank are now the subject of that certain action in the District Court of the United States for the District of Columbia, entitled: "Security-First National Bank of Los Angeles, etc., Plaintiff, vs. Palomas Land and Cattle Company, etc., et al., Defendants," designated as Civil Action No. 21295 on the records of said Court;

3. The parties hereto are desirous of resolving their conflicting claims to said award and of compromising and settling all differences among them in the manner hereinafter set forth;

Now, Therefore, in consideration of the premises and the respective undertakings on the part of the parties hereto, as hereinafter set forth, it is hereby agreed as follows:

I.

Palomas and Bank shall, and do hereby, assign, transfer and set over unto the Trustees all of their respective rights, titles and interests in and to said award (including all sums paid or payable on said award), in trust nevertheless, and the Trustees shall, and hereby covenant and agree to, hold the same, together with all their rights, titles and in-

terests in and to said award (including all sums paid or payable on said award), in trust for the following purposes:

(a) To collect, receive and receipt for all sums paid or payable on said award and the Trustees shall have full power so to do;

(b) To promptly, upon receipt of any sums paid or payable on account of said award, disburse the same as follows:

A seven-nineteenths (7/19ths) part to Palomas;

A seven-nineteenths (7/19ths) part to Bank;

The remaining five-nineteenths (5/19ths) part to Garfield, Baldwin & Vrooman (the Trustees). [32]

Pending actual disbursement of said funds by the Trustees, as above provided, the Trustee shall maintain the same in a trust account with the Cleveland Trust Company of Cleveland, Ohio, or with some other responsible bank or trust company. The Trustees shall execute this trust without charge. No expenses shall be incurred without first obtaining the written approval of Palomas and Bank. The Trustees shall not make or permit any substitution under any power of attorney heretofore or hereafter given them to enable them to effect collection of sums payable on said award without first causing the substitute to execute an undertaking to hold all funds coming to his hands in trust for the purposes and on the terms and conditions herein set forth.

II.

Each party to this agreement shall, and does hereby, release and forever discharge each other party to this agreement, and Bank, in addition, shall and does hereby release and forever discharge Hueco Cattle Company, a Texas corporation, and Marshall B. Stephenson and each of them of and from all claims, demands, actions and causes of action of whatsoever character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof, except claims, demands, actions or causes of action based upon this agreement.

III.

Each party hereto on the demand of any other party hereto shall execute and deliver such further instrument or instruments as may be necessary or convenient to enable the Trustees to collect any sums paid or payable on account of said award and to disburse the same as hereinabove set forth, or to otherwise effectuate the purposes of this agreement.

IV.

In the event that all sums paid or payable on the aforesaid award shall not have been sooner collected and disbursed by the Trustees, as provided in Paragraph I hereof, the trust created in and by said Paragraph I shall terminate on the 28th day of October, 1964, and thereupon any funds in the hands of the Trustees collected on said award shall be

forthwith disbursed in accordance with the provisions of Paragraph I hereof, and said award (to the extent of and including any sums unpaid on account thereof) shall be disposed of by the Trustees in such manner as the parties hereto may agree upon in writing, and failing such agreement, then the Trustees shall distribute said award (to the extent of and including any sums unpaid on account thereof), discharged of any trust, as follows:

An undivided seven-nineteenths (7/19ths) part to Palomas;

An undivided seven-nineteenths (7/19ths) part to Bank;

The remaining undivided five-nineteenths (5/19ths) part to Garfield, Baldwin & Vrooman (the Trustees).

#### V.

Palomas, within thirty (30) days from the date hereof, shall cause to be executed, and shall deliver to Bank, a good and sufficient instrument or instruments wherein and whereby Palomas [33] and its President, Marshall B. Stephenson, and each of them, release and forever discharge Compania Palomas de Terrenos y Ganado, S. A., a Mexican corporation, hereinafter called "Compania Palomas," Nacional Ganadera, S. A., de C. V., a Mexican corporation, hereinafter called "Nacional Ganadera," Ben F. Williams, A. J. Kalin, W. C. Greene, F. A. Villalobos, Charles E. Wiswall and Alfonso Morales, and each of them, of and from all claims, demands, actions and causes of actions of whatsoever



character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof.

## VI.

Bank, within thirty (30) days from the date hereof, shall cause to be executed, and shall deliver to Palomas, a good and sufficient instrument or instruments wherein and whereby Compania Palomas, Nacional Ganadera, said Ben F. Williams, A. J. Kalin, W. C. Greene, F. A. Villalobos, Charles E. Wiswall and Alfonso Morales, and each of them, release and forever discharge Palomas, said Marshall B. Stephenson and Hueco Cattle Company, a Texas corporation, and each of them, of and from all claims, demands, actions and causes of action of whatsoever character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof.

## VII.

Any notice which any party may desire to give to any other party may be given by United States registered mail addressed to Palomas at 1100 First National Bank Building, El Paso, Texas, to Bank at its Head Office, Sixth and Spring Streets, Los Angeles, California, and to the Trustees at 1401 Midland Building, Cleveland, Ohio, subject to the right of any party to designate for itself a different address by notice similarly given.

In Witness Whereof, the parties hereto have ex-

executed this agreement as of the day and year first above written.

PALOMAS LAND AND  
CATTLE COMPANY,

[Corporate Seal]

By /s/ MARSHALL B. STEPHENSON,  
President.

By /s/ SADIE BROWN,  
Secretary.

Party of the First Part  
and "Palomas."

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES,

[Corporate Seal]

By /s/ ROBT. J. SEVITZ,  
Vice President.

By /s/ RANDALL BOYD,  
Asst. Sec.

Party of the Second Part  
and "Bank."

/s/ JAMES R. GARFIELD,

/s/ ARTHUR D. BALDWIN,

/s/ CLARE M. VROOMAN.

GARFIELD, BALDWIN &  
VROOMAN,

By s/ JAMES R. GARFIELD,

Collectively Party of the  
Third Part and "Trustees."

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 8, 1950. [34]



[Title of District Court and Cause.]

ANSWER OF DEFENDANTS LOUIS A.  
SCOTT, JOHN L. RASBERRY AND JAMES  
F. HULSE TO COMPLAINT FOR INTER-  
PLEADER

Come now defendants Louis A. Scott, John L. Rasberry and James F. Hulse and for answer on behalf of themselves alone to the complaint in interpleader herein, allege:

1. Deny the allegation in paragraph VI of the complaint that the, or any, claim asserted by defendant Palomas against plaintiff to the said sum of \$5,488.11 deposited by plaintiff into the registry of this Court, ever was or is asserted by said defendant Palomas in good faith. Allege that only these answering defendants are entitled to the said sum (less such reasonable amount as may be allowed by this Court to plaintiff for his attorney's fees, costs and expenses herein), and allege that defendant Palomas [38] is not entitled to said sum, or to any part thereof.

2. Except as above denied or otherwise specifically alleged, these answering defendants admit each and every allegation contained in the complaint herein, and consent that an order be made herein requiring all defendants to interplead, litigate and settle between themselves their claims and rights to the said sum deposited into the registry of this Court; and further consent that plaintiff be released and discharged from all further liability with respect to, but only to the extent of, the said

sum of \$5,488.11 deposited into the registry of this Court; and further consent that this Court allow to plaintiff a reasonable sum as attorney's fees, costs and expenses, and that the same be ordered to be a lien upon said sum so deposited into the registry of this Court; and further consent that the Temporary Restraining Order herein, enjoining and restraining defendants until further order of this Court from taking, maintaining or prosecuting any proceedings in any State or Federal Court, based on any of the claims of defendants to the said sum, be made permanent.

Wherefore these answering defendants pray as follows:

(a) That all defendants be ordered to interplead, litigate, and settle their claims and rights to the said sum of \$5,488.11 deposited into the registry of this Court;

(b) That plaintiff be released and discharged from all further liability to defendants with respect to, but only to the extent of, \$5,488.11 deposited into the registry of this Court;

(c) For such other and further relief as to the Court may seem proper.

OVERTON, LYMAN, PRINCE  
& VERMILLE and  
CARL J. SCHUCK,

By /s/ CARL J. SCHUCK,  
Attorneys for Defendants Louis A. Scott, John L.  
Rasberry and James F. Hulse.

Duly verified.

[Endorsed]: Filed May 18, 1950. [39]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN L. RASBERRY IN OPPOSITION TO AFFIDAVITS OF ROLAND RICH WOOLLEY AND LETHA A. METCALF, FILED HEREIN IN OPPOSITION TO ORDER TO SHOW CAUSE

State of Texas,  
County of El Paso—ss.

John L. Rasberry, being first duly sworn, deposes and says: That he is an attorney-at-law and is a member of the firm of Burges, Scott, Rasberry & Hulse, being a partnership composed of the defendants Louis A. Scott, John L. Rasberry and James F. Hulse. Said law firm and affiant are engaged in the practice of law in the City of El Paso, State of Texas. Said law firm of Burges, Scott, Rasberry & Hulse is a successor law firm to the former firm of the same name composed of defendants Louis A. Scott, John L. Rasberry and James F. Hulse, and also of William H. Burges. Said William H. Burges died May 11, 1946, at which time said present firm came into existence as a successor of said former firm. Said former firm of Burges, Scott, Rasberry & Hulse, composed of the [50] individuals above named, itself was a successor law firm to the law firm known as Burges, Burges, Scott, Rasberry & Hulse, which was composed of said defendants Louis A. Scott, J. L. Rasberry and James F. Hulse and also of the said William H. Burges and Richard F. Burges. Rich-

ard F. Burges died January 13, 1945, as a result of which said firm ceased to exist and as of which time said former firm of Burges, Scott, Rasberry & Hulse came into existence as a successor of said first firm.

The award of the American-Mexican Claims Commission, referred to in the complaint herein, was made on or about August 23, 1943, under a claim which prior thereto had been filed and prosecuted by defendant Palomas Land and Cattle Company (hereinafter for convenience usually referred to simply as defendant Palomas) and was allowed in the total sum of \$1,686,056.00. Prior to the allowance of said claim certain persons known as Ben Williams, Charles E. Wiswall, W. C. Greene, A. J. Kalin, and Alphonso Morales, and the Security-First National Bank of Los Angeles, a national banking association, did assert that they only, and not defendant Palomas were entitled to and were the owners of the said claim filed and then being prosecuted by defendant Palomas against the said American-Mexican Claims Commission, and asserted and claimed that only they were entitled to any award made pursuant to said claim.

For some time prior to June, 1943, and until his death on May 11, 1946, one Marshall B. Stephenson was the president of defendant Palomas and was its manager and sole owner of all of its stock. He was also the husband of Letha L. Stephenson, now Letha L. Metcalf, who since his death has been and is the president of defendant Palomas. Said Letha L. Metcalf is the same person as affiant by that

name who executed the affidavit sworn to May 4, 1950, and on file herein.

In June, 1943, said Marshall B. Stephenson had a conversation with affiant, who then was a member of said firm of Messrs. [51] Burges, Burges, Scott, Rasberry & Hulse. Said conversation took place in El Paso, Texas. Mr. Stephenson and affiant discussed the said then pending claim of defendant Palomas against the said American-Mexican Claims Commission and said Marshall B. Stephenson asked affiant whether he and the said law firm of which he was a member would prosecute and assert the claim of defendant Palomas to any award made by that claims commission and defend the position of Palomas against the aforesaid claims then being made by Ben Williams, et al. and the Security-First National Bank of Los Angeles. Affiant stated that he and said law firm would do so. There was then a discussion as to what the compensation of affiant and his then firm should be for services to be rendered in that connection, and thereafter said Marshall B. Stephenson stated that for such services said law firm would receive 15% of all sums realized by defendant Palomas in the event the matters in controversy were disposed of by litigation or were settled after the filing of any lawsuit. Affiant then stated to said Marshal B. Stephenson that the said fee arrangement was acceptable to him and said law firm.

Thereafter affiant and his said firm did various things for and on behalf of defendant Palomas in representing its interests and defending against the



said claims of Ben Williams, et al. and the Security-First National Bank of Los Angeles.

On or about August 6, 1943, said Marshall B. Stephenson, as President of defendant Palomas, delivered to affiant and his said law firm a letter dated August 6, 1943, a copy of which is attached hereto as Exhibit "A." (A copy of said agreement is also attached as an exhibit to the affidavit of Roland Rich Woolley on file herein.) Affiant signed his name "J. L. Rasberry" at the place indicated at the end of that letter and the signature of "Marshall B. Stephenson" appeared at the place indicated in said exhibit. At that time said Marshall B. Stephenson was the President of defendant Palomas, was the sole owner of all of its shares of stock, was the Manager of said defendant and did act for and on behalf of said defendant. Under said agreement it was provided, among other things, as follows:

"Should the matters in controversy be disposed of by litigation or settled by agreement after the filing of any suit or legal procedure by undersigned or the other claimants mentioned, you shall receive 15% of all sums realized by undersigned or either of them."

As above stated, on August 23, 1943, an award was entered by the American-Mexican Claims Commission under the claim of defendant Palomas and the award was in the total sum of \$1,686,056.00.

On September 18, 1943, a suit was filed in the District Court of the United States for the District of Columbia, entitled "Security-First National

Bank of Los Angeles vs. Palomas Land and Cattle Company," No. 21295, and on September 22, 1943, a suit was filed in the Superior Court of the State of California, in and for the County of Los Angeles, entitled "Security-First National Bank of Los Angeles vs. Palomas Land and Cattle Company," No. 488283. Said suits were filed by said Security-First National Bank of Los Angeles in support of the aforesaid claims and contested the right of defendant Palomas to the said award by the said American-Mexican Claims Commission and prayed, among other things, that said plaintiff be adjudged entitled to receive and have said award.

Said law firm of Burges, Burges, Scott, Rasberry & Hulse and especially affiant John L. Rasberry represented said defendant Palomas in defending against the said actions and in protecting the right of said defendant Palomas to the said award, including representation of said defendant and negotiation on behalf of it in connection with the settlement referred to in the next paragraph hereof.

On or about October 29, 1943, said conflicting claims to the said award, were settled under the terms of the trust Agreement dated October 29, 1943, between defendant Palomas and the said [53] Security-First National Bank of Los Angeles and James M. Garfield, Arthur D. Baldwin (plaintiff herein) and Clare M. Vrooman, a true copy of which agreement is attached hereto as Exhibit "B." (A copy of said agreement is also attached to the affidavit of said Letha L. Metcalf on file herein.)



Under the terms of the said settlement and trust Agreement there was payable to defendant Palomas as its share of the said award, 7/19 of the said total award of \$1,686,056.00, or a total sum payable to defendant Palomas of \$590,119.60, said sum being payable when and as collected by plaintiff Baldwin and his predecessor trustees under said trust Agreement. Under and by virtue of said agreements between defendant Palomas and the said law firm of Burges, Burges, Scott, Rasberry & Hulse, referred to above, said law firm thereupon became entitled to receive 15% of said 7/19 share payable to said defendant Palomas or a total sum of \$88,517.94, and 15% of the said 7/19 share of defendant Palomas was thereby assigned in equity to said law firm as security for its said fee for legal services rendered to defendant Palomas.

On December 21, 1943, defendant Palomas and said law firm received from plaintiff herein a check in the sum of \$177,035.88, being the 7/19 share payable to defendant Palomas under said trust Agreement in and to a 30% installment paid on said award, and on said date said law firm by affiant John L. Rasberry and defendant Palomas by said Marshall B. Stephenson, signed and delivered a letter to the El Paso National Bank of El Paso, Texas, transmitting said check to said bank and directing the said bank to effect collection of said check and to deposit 15% of the proceeds thereof, to wit, \$26,555.38, to said law firm and to deposit the balance of said proceeds, to wit, \$150,480.50, to the account of defendant Palomas. A true copy of

said letter dated December 21, 1943, is attached hereto as Exhibit "C." On said date said Marshall B. Stephenson and affiant caused the proceeds of said check to be deposited with said El Paso National Bank, \$26,555.38 to the account [54] of the said law firm of Burges, Burges, Scott, Rasberry & Hulse and the balance thereof, to wit, \$150,480.50, to the account of defendant Palomas, and said proceeds were so deposited in said amounts to said accounts.

On or about March 13, 1944, defendant Palomas duly and regularly executed and filed with the United States Treasury Department an amended return for its 1941 Corporation Income and Declared Value Excess-Profits Tax Return. Said amended return was signed on behalf of defendant Palomas by said Marshall B. Stephenson as its President and by said Letha L. Stephenson. Incorporated in said Amended Return and attached thereto as a part thereof was a schedule entitled "Palomas Land & Cattle Co. Statement of Claim Recoverable and Recovered," a true copy of which is attached hereto as Exhibit "D." In said schedule defendant Palomas reported, among other things, the said interest of said law firm in the said 7/19 share of defendant Palomas in said award, and reported the said payment of \$26,555.38 to said law firm, as follows:

"Payment made or to be made to Burges, Burges, Scott, Rasberry & Hulse upon receipt by Palomas Land and Cattle Company of cash upon account of the award, being a contingent

interest assigned to them for legal services at the time the conflicting claims of the Security-First National Bank of Los Angeles was asserted—cash paid in 1943, \$26,555.38; total claim \$88,517.94.” (Underscoring supplied.)

Also incorporated in said Amended Return, and as a part thereof, was an affidavit of which the following is a true copy:

“We, the undersigned, President (or Vice President, or other principal officer) and Treasurer (or Assistant Treasurer, or Chief Accounting Officer) of the Corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been [55] examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

MARSHALL B. STEPHENSON,  
(President or other  
Principal Officer.)

LETHA L. STEPHENSON,  
(Treasurer, Assistant Treasurer, or Chief Accounting Officer.)”

Said affidavit was signed under oath before a notary public on or about March 13, 1944, by said Marshall

B. Stephenson and said Letha L. Stephenson, both of whom then were officers of defendant Palomas. Said Marshall B. Stephenson was the president and sole owner of all of the stock of said defendant Palomas and was its manager.

On or about March 13, 1944, defendant Palomas duly executed and filed with the United States Treasury Department its Annual Information Return on Form 1096, and therein stated that in 1943 it had paid to the said law firm of Burges, Burges, Scott, Rasberry & Hulse a fee of \$26,555.38, and attached thereto a schedule entitled "Palomas Land and Cattle Company—Statement Relative to Fees Paid in 1943," a true copy of which is attached hereto as Exhibit "E." (Under date of January 31, 1950, affiant mailed a true copy of said Exhibit "E" to Roland Rich Woolley, one of the attorneys for defendant Palomas herein.) In said schedule defendant Palomas stated, among other things, as follows:

"The amount paid Burges, Burges, Scott, Rasberry & Hulse as shown on Form 1099 was by virtue of a contingent interest assigned to them for legal services at the time the conflicting claims of the Security-First National Bank of Los Angeles were asserted." (Underscoring supplied.)

Said amount reported on said Form 1099 (which was attached to said Form 1096), as the fee paid said law firm by defendant Palomas [56] was \$26,555.38. Incorporated in and as a part of said An-

nual Information Return was an affidavit of which the following is a true copy:

“I swear (or affirm) that to the best of my knowledge and belief the accompanying reports on Form 1099 and Form 1099 L and/or the statements on the reverse side of this form, including any accompanying schedules, constitute a true and complete return of payments of the above-described classes of income made by the person or organization named above during the calendar year 1943.”

Said affidavit was signed “Marshall B. Stephenson, President,” and was subscribed and sworn to before a Notary Public.

Thereafter on or about October 27, 1945, affiant as attorney for defendant Palomas, received from said James R. Garfield (a predecessor trustee of plaintiff), a second installment check based on 10% of the said 7/19 share of Palomas under the award, that check being in the total sum of \$59,011.96. On October 30, 1945, affiant and said Marshall B. Stephenson both personally delivered said check to the El Paso National Bank and caused 15% thereof, to wit, \$8,851.79, to be deposited to the account of said law firm of Burges, Scott, Raspberry & Hulse, and the balance thereof, to wit, \$50,160.17, to be deposited to the account of defendant Palomas and said sums were so deposited to those accounts.

On May 11, 1946, said Marshall B. Stephenson, who was then still the President and sole owner of all of the stock of defendant Palomas, died, and all



of that stock thereupon became the property of said Letha L. Stephenson (now Letha L. Metcalf) for life. At all times thereafter herein referred to, said Letha L. Metcalf was the President and sole owner for life of all of the stock of defendant Palomas.

On or about May 31, 1947, affiant received from said James R. Garfield a United States Treasury Department voucher for the [57] third installment on the award equal to 6.5% of the total award. Said voucher required signature by two officers of defendant Palomas. At that time Mr. P. W. Pogson was the Vice President of defendant Palomas and Percy W. Pogson, Jr., was the Secretary-Treasurer of defendant Palomas. Both resided in El Paso, Texas. Said officers executed said voucher on behalf of defendant Palomas and affiant then sent said voucher so executed by mail to said James R. Garfield and accompanied said voucher with a letter dated May 31, 1947, to said James R. Garfield, a true copy of which is attached hereto as Exhibit "F." Under date of May 31, 1947, affiant also mailed a letter to said Letha L. Stephenson in which he explained the calculation of said third installment, mentioned the deduction of "our attorney's fees of 15%" and enclosed a true copy of his said letter of May 31, 1947, to said James R. Garfield (Exhibit "F"). A true copy of affiant's said letter of May 31, 1947, to said Letha L. Stephenson is attached hereto as Exhibit "G." (On January 31, 1950, affiant mailed a true copy of said Exhibit "G" to said Roland Rich Woolley, attorney herein for defendant Palomas.)

Thereafter affiant received a letter from plaintiff dated July 1, 1947, enclosing two checks dated July 1, 1947, on said third installment, one payable only to defendant Palomas in the amount of \$32,604.11, being 85% of the third installment payable to defendant, Palomas, and the other payable to defendant Palomas and Messrs. Burges, Scott, Rasberry & Hulse in the amount of \$5,753.66, being in the sum of 15% of said third installment. A true copy of said letter of July 1, 1947, is attached hereto as Exhibit "H." Affiant then by letter dated July 8, 1947, addressed to P. W. Pogson, Jr. (a true copy of which is attached as Exhibit "I" hereto), mailed to the latter a copy of said letter dated July 1, 1947 (Exhibit "H"), and the said two checks. On the same day, affiant mailed to said Letha L. Stephenson a copy of said Exhibits "H" and "I." Said check in the sum of \$5,753.66 was then endorsed by affiant on behalf [58] of said law firm and by said P. W. Pogson as Vice-President and Percy W. Pogson, Jr., as Secretary-Treasurer of defendant Palomas, and was then by affiant deposited to the account of said law firm.

On January 24, 1948, affiant received from said James R. Garfield a voucher for the fourth installment equal to 6% of the award. Said voucher was executed on behalf of defendant Palomas by P. W. Pogson and Percy W. Pogson, Jr., as, and who then were, respectively, the Vice President and Secretary-Treasurer of defendant Palomas. On said date affiant mailed said voucher to said James R. Garfield enclosed in his letter dated January 24,



1948, a true copy of which is attached hereto as Exhibit "J." Affiant also sent a true copy of said letter to said Letha L. Stephenson, to said P. W. Pogson, Jr., and to Mr. Henry T. Moore, who at that time was the Los Angeles attorney of said defendant Palomas.

Thereafter under date of March 4, 1948, plaintiff received from said James R. Garfield two checks dated March 4, 1948, for the fourth installment payable under said award equal to 6% thereof, the first check being payable only to defendant Palomas in the amount of \$30,096.09, being equivalent to 85% of said fourth installment payment, and the second check being payable to said defendant Palomas and to said law firm, being in the amount of \$5,311.08, being in the amount of 15% of said fourth installment payment. A true copy of said letter dated March 4, 1948, is attached hereto as Exhibit "K." Said check in the amount of \$5,311.48 was thereafter endorsed by affiant for said law firm of Burges, Scott, Rasberry & Hulse, and was also endorsed on behalf of defendant Palomas by P. W. Pogson and Percy W. Pogson, Jr., as Vice President and Secretary-Treasurer, respectively, of defendant Palomas. Affiant then deposited the said check to the account of said law firm.

On December 27, 1948, affiant received a voucher for the fifth installment equivalent to 6.4% of said award, said voucher [59] being received by letter from said James R. Garfield. On said date said voucher was signed on behalf of defendant Palomas

by P. W. Pogson and Percy W. Pogson, Jr., as, and who then were, the Vice President and Secretary-Treasurer, respectively, of defendant Palomas, and affiant on said date transmitted said voucher so executed to said James R. Garfield by letter dated December 27, 1948, a true copy of which is attached hereto as Exhibit "L." On said date affiant also mailed a true copy of said letter of December 27, 1948, to Letha L. Stevenson, then President of defendant Palomas, and to P. W. Pogson, Jr., who was then the Secretary-Treasurer of defendant Palomas, and to said Henry T. Moore, who was then the Los Angeles attorney for defendant Palomas.

Thereafter on or about February 6, 1949, affiant received from said James R. Garfield two checks covering the fifth installment on said award, one of which was payable to the order of defendant Palomas and was in the amount of \$32,102.51, which sum was 85% of said payment payable to defendant Palomas, and the other check was payable to the order of defendant Palomas and to said law firm of Burges, Scott, Rasberry & Hulse and was in the amount of \$5,665.14, which was equivalent to 15% of said fifth installment. A true copy of said letter dated February 4, 1949, is attached hereto as Exhibit "M." Thereafter said latter check was endorsed by affiant for said law firm and was endorsed also by P. W. Pogson and Percy W. Pogson, Jr., on behalf of defendant Palomas, said persons still being then the Vice President and Secretary-Treasurer, respectively, of defendant Palomas. There-

after affiant caused said check to be deposited to the account of said law firm.

At no time until on or about January 19, 1950, did defendant Palomas or any officer or director of said defendant Palomas ever question the right of defendant law firm to receive 15% of all amounts payable to defendant Palomas under said award, or question the fact that 15% of said recovery had been assigned to said law firm, or that said law firm had a lien on said recovery to the extent of said 15% interest, or question the right of affiant's said law firm to receive said sum directly from the trustees. Until January 19, 1950, said law firm and affiant received no comments of any kind from Letha L. Stephenson (now Letha L. Metcalf) with respect to any of the matters stated in, or directions given in, said letters from affiant to said James R. Garfield, copies of which are attached hereto as Exhibits "F," "J" and "L."

The aforesaid letter agreement of August 6, 1943, (Exhibit "A" hereto), was executed, signed and delivered by said Marshall B. Stephenson and by affiant in El Paso, Texas.

Affiant respectfully submits that by virtue of the facts herein and in the Complaint stated, and particularly by the said [61] agreement of August 6, 1943, (Exhibit "A" hereto), and by the conduct of the parties and especially of defendant Palomas, 15% of the Palomas share under the trust Agreement (Exhibit "B" hereto) was assigned in equity to defendant law firm and that said law firm has a

valid claim against plaintiff for the funds deposited in the Registry of the court.

/s/ JOHN L. RASBERRY.

Subscribed and sworn to before me this 15th day of May, 1950.

/s/ ANNE DOYLE,

Notary Public in and for  
Said County and State.

My Commission expires June 1, 1951. [62]

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Exhibit A

August 6, 1943.

Burges, Burges, Scott, Rasberry & Hulse,  
El Paso, Texas.

Confirming our verbal agreement, the undersigned hereby employs you to prosecute and assert the claims of undersigned to any award made to undersigned under the provisions of the convention between the United States of America and Mexico, dated November 19, 1941, and Public Law 814 adopted by the 77th Congress of the United States, and to defend any claims asserted to any such award by Ben Williams, et al, and the Security-First National Bank of Los Angeles. Undersigned agrees to pay you for any services rendered in this connection as follows:

1. Should the matters in controversy be settled by agreement prior to the filing of any suit by

undersigned or the parties named, you shall receive 5% of any sums realized by undersigned or either of them.

2. Should the matters in controversy be disposed of by litigation or settled by agreement after the filing of any suit or legal procedure by undersigned or the other claimants mentioned, you shall receive 15% of all sums realized by undersigned or either of them.

3. It is understood that in arriving at your fee, any sum deducted from the award by the law firm of Garfield, Baldwin & Vrooman or ultimately allowed them for the prosecution of such claims before the Mexican Claims Commission shall not be taken into consideration in arriving at the sums realized by undersigned.

4. It is also understood that undersigned shall pay all expenses incurred by you in the handling of this matter, including traveling expenses, telephone and telegraph bills, etc., and the fees of any out of state attorney or attorneys whom you may deem it necessary to employ for the purpose of prosecuting or defending any litigation instituted outside the State of Texas to protect the undersigned.

Yours very truly,

PALOMAS LAND AND  
CATTLE COMPANY,

By /s/ MARSHALL B. STEPHENSON,  
President. [63]

HUECO CATTLE COMPANY,  
By /s/ MARSHALL B. STEPHENSON,  
President.

Approved:

BURGES, BURGES, SCOTT,  
RASBERRY & HULSE,  
By /s/ J. L. RASBERRY. [64]

Exhibit B

Agreement

This Agreement made as of the 29th day of October, 1943, by and between Palomas Land and Cattle Company, a California corporation, as Party of the First Part, hereinafter called "Palomas," Security-First National Bank of Los Angeles, a National Banking Association, as Party of the Second Part, hereinafter called "Bank," and James R. Garfield, Arthur D. Baldwin and Clare M. Vrooman, of Cleveland, Ohio, individually and as partners engaged in the practice of law under the firm name of Garfield, Baldwin & Vrooman, collectively as Party of the Third Part, hereinafter for convenience sometimes referred to as "Trustees,"

Witnesseth, that Whereas:

1. Under date of August 26, 1943, pursuant to the provisions of the Settlement of Mexican Claims Act of 1942, the American Mexican Claims Commission entered an award in favor of Palomas in the amount of \$1,686,056.00 and certified such award to the Secretary of the Treasury for payment to Palomas in accordance with the provisions of said



Act of 1942, said award having been made on that certain claim of Palomas theretofore pending before the General Claims Commission of the United States of America and United Mexican States under Docket No. 2067 of that Commission;

2. The parties to this agreement assert conflicting claims to said award: the conflicting claims of Palomas and Bank are now the subject of that certain action in the District Court of the United States for the District of Columbia, entitled: "Security-First National Bank of Los Angeles, etc., Plaintiff, vs. Palomas Land and Cattle Company, etc., et al., Defendants," designated as Civil Action No. 21295 on the records of said Court; [65]

3. The parties hereto are desirous of resolving their conflicting claims to said award and of compromising and settling all differences among them in the manner hereinafter set forth;

Now, Therefore, in consideration of the promises and the respective undertakings on the part of the parties hereto, as hereinafter set forth, it is hereby agreed as follows:

I.

Palomas and Bank shall, and do hereby, assign, transfer and set over unto the Trustees all of their respective rights, titles and interests in and to said award (including all sums paid or payable on said award), in trust nevertheless, and the Trustees shall, and hereby covenant and agree to, hold the same, together with all their rights, titles and interests in and to said award (including all sums paid or pay-



able on said award), in trust for the following purposes:

(a) To collect, receive and receipt for all sums paid or payable on said award and the Trustees shall have full power so to do;

(b) To promptly, upon receipt of any sums paid or payable on account of said award, disburse the same as follows:

A seven-nineteenths ( $7/19$ ths) part to Palomas;

A seven-nineteenths part to Bank;

The remaining five-nineteenths ( $5/19$ ths) part to Garfield, Baldwin & Vrooman, (the Trustees).

Pending actual disbursement of said funds by the Trustees, as above provided, the Trustee shall maintain the same in a trust account with the Cleveland Trust Company of Cleveland, Ohio, or with some other responsible bank or trust company. The Trustees shall execute this trust without charge. No expenses shall be incurred without first obtaining the written approval of Palomas and Bank. The Trustees shall not make or permit any substitution under any power of attorney heretofore or hereafter given them to [66] enable them to effect collection of sums payable on said award without first causing the substitute to execute an undertaking to hold all funds coming to his hands in trust for the purposes and on the terms and conditions herein set forth.

II.

Each party to this agreement shall, and does hereby, release and forever discharge each other party to this agreement, and Bank, in addition, shall and does hereby release and forever discharge Hueco Cattle Company, a Texas corporation, and Marshall B. Stephenson and each of them of and from all claims, demands, actions and causes of action of whatsoever character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof, except claims, demands, actions or causes of action based upon this agreement.

III.

Each party hereto on the demand of any other party hereto shall execute and deliver such further instrument or instruments as may be necessary or convenient to enable the Trustees to collect any sums paid or payable on account of said award and to disburse the same as hereinabove set forth, or to otherwise effectuate the purposes of this agreement.

IV.

In the event that all sums paid or payable on the aforesaid award shall not have been sooner collected and disbursed by the Trustees, as provided in Paragraph I hereof, the trust created in and by said Paragraph I shall terminate on the 28th day of October 1, 1964, and thereupon any funds in the hands of the Trustees collected on said award shall

be forthwith disbursed in accordance with the provisions of Paragraph I hereof, and said award (to the extent of and including any sums unpaid on account thereof) shall be disposed of by the Trustees in such manner as the parties hereto may agree upon in writing, and failing such agreement, then the Trustees shall distribute said award (to the extent of [64] and including any sums unpaid on account thereof), discharged of any trust, as follows:

An undivided seven-nineteenths ( $7/19$ ths) part to Palomas;

An undivided seven-nineteenths ( $7/19$ ths) part to Bank;

The remaining undivided five-nineteenths ( $5/19$ ths) part to Garfield, Baldwin & Vrooman, (the Trustees).

#### V.

Palomas, within thirty (30) days from the date hereof, shall cause to be executed, and shall deliver to Bank, a good and sufficient instrument or instruments therein and whereby Palomas and its President, Marshall B. Stephenson, and each of them, release and forever discharge *Compania Palomas de Terrenos y Ganado, S. A.*, a Mexican corporation, hereinafter called "*Compania Palomas*," *Nacional Ganadera, S.A. de C.V.*, a Mexican corporation, hereinafter called "*Nacional Ganadera*," Ben F. Williams, A. J. Kalin, W. C. Greene, F. A. Villalobos, Charles E. Wiswall and Alfonso Morales, and each of them, of and from all claims, demands, actions and causes of action of whatsoever character,

now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof.

VI.

Bank, within thirty (30) days from the date hereof, shall cause to be executed, and shall deliver to Palomas, a good and sufficient instrument or instruments wherein and whereby Compania Palomas, Nacional Ganadera, said Ben F. Williams, A. J. Kalin, W. C. Greene, F. A. Villalobos, Charles E. Wiswall and Alfonso Morales, and each of them, release and forever discharge Palomas, said Marshall B. Stephenson and Hueco Cattle Company a Texas corporation, and each of them, of and from all claims, [68] demands, actions and causes of action of whatsoever character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof.

VII.

Any notice which any party may desire to give to any other party may be given by United States registered mail addressed to Palomas at 1100 First National Bank Building, El Paso, Texas, to Bank at its Head Office, Sixth and Spring Streets, Los Angeles, California, and to the Trustees at 1401 Midland Building, Cleveland, Ohio, subject to the right of any party to designate for itself a different address by notice similarly given.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

PALOMAS LAND AND  
CATTLE COMPANY,  
[Corporate Seal.]

By /s/ MARSHALL B. STEPHENSON,  
President.

By /s/ SADIE BROWN,  
Secretary.

Party of the First Part  
and "Palomas."

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES,  
[Corporate Seal.]

By /s/ ROBT. J. SEVITZ,  
Vice President.

By /s/ RANDALL BOYD,  
Asst. Sec.

Party of the Second Part  
and "Bank."

/s/ JAMES R. GARFIELD.

/s/ ARTHUR D. BALDWIN.

/s/ CLARE M. VROOMAN.  
GARFIELD, BALDWIN &  
VROOMAN,

By /s/ JAMES R. GARFIELD,  
Collectively Party of the Third  
Part and "Trustees." [69]

Exhibit C

December 21, 1943.

El Paso National Bank,  
El Paso, Texas.

Attention: Mr. H. A. Jacobs.

Gentlemen:

We hand you herewith check in the sum of \$177,-  
035.88, dated December 17, 1943, and numbered  
4098, drawn on the Cleveland Trust Company by  
Garfield, Baldwin & Vrooman, Trustees. Please  
effect collection of said check and deposit the pro-  
ceeds as follows:

- (1) To the account of Burges, Burges,  
Scott, Rasberry & Hulse, 15% there-  
of, or .....\$ 26,555.38
- (2) To the account of the Palomas Land  
and Cattle Company, the balance,  
or ..... 150,480.50

Yours very truly,  
BURGES, BURGESS, SCOTT,  
RASBERRY & HULSE,

By /s/ J. L. RASBERRY.  
PALOMAS LAND AND  
CATTLE COMPANY,

By /s/ MARSHALL B. STEPHENSON,  
President.

JLR/b

Encl. [70]

## Exhibit D

## Palomas Land &amp; Cattle Co.

## Statement of Claim Recoverable and Recovered

	Cash Paid in	
	1943—30%	Total Claim
Total value of claim .....	\$505,816.80	\$1,686,056.00
Less, 5% retained by the Commission.....	25,290.84	84,302.80
	<hr/>	<hr/>
	480,525.96	1,601,753.20
Less, fee deducted or to be deducted by Garfield, Baldwin & Vrooman .....	126,454.20	421,514.00
	<hr/>	<hr/>
	354,071.76	1,180,239.20
Portion paid or to be paid by the Trustees under the agreement attached hereto to Security-First National Bank of Los Angeles by way of compromise and settlement of the Bank's claim to the award .....	177,035.88	590,119.60
	<hr/>	<hr/>
	177,035.88	590,119.60
Payment made or to be made to Burges, Burges, Scott, Rasberry & Hulse upon receipt by Palomas Land & Cattle Co. of cash upon account of the award, being a contingent interest assigned to them for legal services at the time the con- flicting terms of the Security-First National Bank of Los Angeles were asserted .....	26,555.38	88,517.94
	<hr/>	<hr/>
Net Cash Received by Palomas Land & Cattle Co. in 1943 .....	\$152,480.50	
	<hr/> <hr/>	
Net remaining to Palomas Land & Cattle Co.— credited to cost of stock of Cia. Palomas de Terrenos y Ganado, S.A. ....		\$ 501,601.66
		<hr/> <hr/>



Exhibit E

Palomas Land & Cattle Co.

Statement Relative to Fees Paid in 1943

In accordance with a statement made by the President of Palomas Land and Cattle Company as shown in the attached copy of the minutes of a Directors Meeting held September 3rd, 1943, and which recounts the history of a claim filed by the company against the Government of Mexico, and also in accordance with an agreement entered into October 29th, 1943, by and between Palomas Land and Cattle Company, Security-First National Bank of Los Angeles and James R. Garfield, Arthur D. Baldwin and Clare M. Vrooman, a copy of which is attached hereto, Palomas Land and Cattle Company received the net amount disclosed by the statement following, after Garfield, Baldwin & Vrooman deducted their fee and paid and delivered the sum thereon shown to the Security-First National Bank of Los Angeles, all in accordance with the settlement agreement above referred to. The amount paid Burges, Burges, Scott, Rasberry & Hulse as shown on the Form 1099 was by virtue of a contingent interest assigned to them for legal services at the time the conflicting claims of the Security-First National Bank of Los Angeles were asserted:

	Payment Made in	
	1943—30%	Total Claim
Total value of claim .....	\$505,816.80	\$1,686,056.00
Less, 5% retained by the Commission.....	25,290.84	84,302.80
	480,525.96	1,601,753.20
Less, fee to be deducted by Garfield, Baldwin & Vrooman .....	126,454.20	421,514.00
	354,071.76	1,180,239.20
Portion paid or to be paid by the Trustees under the agreement attached hereto to Security-First National Bank of Los Angeles by way of compromise and settlement of the Bank's claim to the award .....	177,035.88	590,119.60
	177,035.88	590,119.60
Payment made or to be made to Burges, Burges, Scott, Rasberry & Hulse upon receipt by Palomas Land & Cattle Co. of cash upon account of the award, being 15% of Net recovery to Palomas as received .....	26,555.38	88,517.94
	150,480.50	501,601.66
Net remaining to Palomas Land & Cattle Company .....	\$150,480.50	\$501,601.66

## Exhibit F

May 31, 1947.

Mr. James R. Garfield,

Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 Guardian Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Company  
General Mexican Claim.

Dear Mr. Garfield:

I received in due time your letter of May 26, 1947, enclosing Voucher (Form 406 Treasury Department) covering the third installment on the Palomas General Mexican Claim of 6.5%, the net proceeds of which appear to be \$104,113.96. Since Marshall's death, his widow, Letha L. Stephenson, who now lives in California, has been President of the company. However, P. W. Pogson is Vice-President and Percy W. Pogson, Jr., is Secretary-Treasurer. We were therefore able to complete the voucher at El Paso and now enclose the same to you herewith duly executed.

As you know, our firm is entitled to 15% of the proceeds due Palomas Land and Cattle Company as attorney's fees. Accordingly, for convenience, we respectfully request that in disbursing the amount due Palomas Land and Cattle Company you make two checks, one for 15% of the amount, payable to this firm, and one for the balance payable to Palomas Land and Cattle Company.

With kind personal regards and best wishes, beg  
to remain

Yours sincerely,

J. L. RASBERRY.

JLR/vb

Encls.

cc: Mr. P. W. Pogson, Jr.

Mrs. Letha L. Stephenson. [73]

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Exhibit G

May 31, 1947.

Mrs. Letha L. Stephenson,  
462 Mesa Road,  
Santa Monica, California.

Dear Letha:

You will note from the attached copy of letter from Mr. Garfield that we have received Voucher (Form 406 Treasury Department) for the third installment on the Palomas General Mexican Claim and from copy of reply attached hereto that we have completed the voucher here at El Paso and returned the same to Mr. Garfield. For your information the voucher was for the total sum of \$109,-593.64 from which was deducted 5%, or \$5,479.68, which is due the Commission under the Act for administration expense, leaving a net amount available of \$104,113.96. As you know, the controversy with Ben Williams, et al., was disposed of by an agreement whereby Garfield, et al., were appointed Trustees for the purpose of disbursing the net pro-

ceeds. This agreement provided that 5/19ths would be retained by Garfield, et al., as their attorney's fees for prosecuting the claim, the balance to be equally disbursed to Palomas Land and Cattle Company and Ben Williams, et al. In other words, Palomas would receive 7/19ths and Ben Williams, et al., 7/19ths, under the terms of this agreement. As I figure it roughly, the amount due Palomas would be \$38,409.10 from which is deducted our attorney's fees of 15%, or \$5,761.36, leaving a net amount to be payable to Palomas of \$32,647.74.

I know that we have roughly carried \$50,000.00 as the net amount due Palomas out of each 10% payment. However, you will note from the attached statement of Mexican claims which accompanied the voucher that the amount available for distribution on this claim is 6.5%, Palomas having in the past received 40% which accounts for the fact that Palomas' part is less than \$50,000.00. [74]

This payment came at a rather unfortunate time in view of the fact that we have been in the midst of trying to get a settlement with the government on the estate tax and it may result in increasing the value placed on Palomas stock. However, Percy and I had a conference this morning and we may get by with the valuation of the claim at 10% in view of the fact that only 6.5% was disbursed and there is really no assurance that any additional sums will be paid for payment, of course, depends on Mexico keeping up her annual payments. In any event, from our viewpoint and aside from the estate tax return, the situation is encouraging for

apparently there will be no further claims allowed and if Mexico does continue her payments, we should eventually receive approximately 99.5% of the total amount allowed. You will note that the payment from Mexico is due in November of each year which means that there is a possibility of another 10% distribution the latter part of this year or the first of next.

Percy will keep you advised as to our progress on the estate tax return.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

J. L. RASBERRY.

JLR/vb

Encls.

cc: Mr. P. W. Pogson, Jr. [75]

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Exhibit H

Law Offices of  
Garfield, Baldwin, Jamison, Hope & Ulrich  
1425 Guardian Building  
Cleveland 14, Ohio

July 1, 1947.

Mr. J. L. Rasberry,  
Burgess, Scott, Rasberry & Hulse,  
First National Bank Bldg.  
El Paso, Texas.

In re: Palomas Land and Cattle Company  
General Mexican Claim:

Dear Mr. Rasberry:

The check covering the third installment on the General Claim has just been received, in the amount of \$104,113.96. Distribution thereof is being made as indicated below:

1. Total amount of the award in this case is.....	\$1,686,056.00	
		<hr/> <hr/>
2. The third installment, based on 6.5% of the award would figure .....	\$ 109,593.64	
3. Less 5% charge made by the government.....	5,479.68	<hr/>
4. Net payment by government on third install- ment .....	\$ 104,113.96	<hr/> <hr/>
5. Distribution of net funds:		
7/19 to Security First National Bank of Los Angeles.....	\$38,357.77	
7/19 available for Palomas Land and Cattle Company's share:		
15% issued to the Com- pany and your firm, its attorneys ....	\$ 5,753.66	
85% to the Company .....	32,604.11	38,357.77
	<hr/>	
5/19 to this firm .....		27,398.42
		<hr/>
		\$ 104,113.96

The two checks, representing the Palomas Land and Cattle Company's share, are enclosed, and I trust that the manner of issuance will meet with your requirements. Since the Vice President and Secretary-Treasurer signed the voucher, it might be desirable to ask that the endorsement of the check by the Palomas Land and Cattle Company carry the signatures of both of those officers on the check which has been made payable to your firm and



Palomas. If you see any objection to such procedure, I shall be glad to hear from you regarding it. I am acting in Mr. Garfield's absence, and, of course, wish to do all that is necessary to insure for the disposition of the funds in accordance with the Agreement.

Mr. Garfield and I are happy to cooperate with you in this matter.

Yours very truly,

/s/ A. D. BALDWIN.

ADB:mb

cc to Mr. MM. [77]

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Exhibit I

July 8, 1947.

Mr. P. W. Pogson, Jr.,  
Mills Building,  
El Paso, Texas.

Dear Percy:

I hand you herewith copy of a letter from Garfield, et al., which is self-explanatory, together with the two checks which accompany the same, one for \$32,604.11 payable to the Palomas Land and Cattle Company and the other for \$5,753.66 payable to the Palomas Land and Cattle Company and ourselves, which together aggregate the sum of \$38,357.77. You will note that the suggestion is made that you and your father endorse the checks since you were the officers signing the original voucher. Accordingly, I have placed a typewritten endorsement on

the two checks in accordance with this suggestion. If you have the seal, it might be well to place the seal thereon as well. As and when the \$5,753.66 check, which evidences our 15% part as per contract with Palomas Land and Cattle Company, has been endorsed, please return the same to us.

Please also check the figures contained in Garfield's letter and advise me whether or not you approve the same.

Yours very truly,

J. L. RASBERRY.

JLR:vb

Encls.

cc: Mrs. Letha L. Stephenson.

Received from Burges, Scott, Rasberry & Hulse the above checks on July 9th, 1947.

/s/ ANONA ROBINSON. [78]

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Exhibit J

January 24, 1948.

Air Mail.

Mr. James R. Garfield,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 Guardian Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Company  
General Mexican Claim

Dear Mr. Garfield:

I received today your letter of January 22, 1948, enclosing voucher (Form 406 Treasury Department)

covering the fourth installment of 6% on the Palomas General Mexican Claim, the net proceeds of which appear to be \$96,105.19. As you know, Mrs. Letha L. Stephenson, who lives in California, is president of the company. However, P. W. Pogson is vice-president and Percy W. Pogson, Jr. is secretary and treasurer. We were therefore able to complete the voucher at El Paso and now enclose the same to you herewith duly executed. As you know, our firm is entitled to 15% of the proceeds due Palomas Land and Cattle Company as attorneys' fees. Accordingly, for convenience, we respectfully request that in disbursing the amount due Palomas Land and Cattle Company you make two checks, one for 15% of the amount, payable to this firm and the Palomas Land and Cattle Company, and one for the balance payable to the Palomas Land and Cattle Company.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

J. L. RASBERRY.

JLR: vb

Encl.

cc: Mrs. Letha L. Stephenson.

Mr. Henry T. Moore. [79]

Mr. P. W. Pogson, Jr.

## Exhibit K

March 4, 1948

Mr. J. L. Rasberry,  
 Burges, Scott, Rasberry & Hulse,  
 First National Bank Bldg.,  
 El Paso, Texas

In re: Palomas Land and Cattle Company  
 General Mexican Claim

Dear Mr. Rasberry:

The check covering the fourth installment on the General Claim has just been received, in the amount of \$96,105.19. Distribution thereof is being made as indicated below:

1. Total amount of the award in this case is.....	\$1,686,056.00
2. The current installment, based on 6% of the award would figure .....	\$ 101,163.36
3. The charge made by the Government— 5% thereof .....	5,058.17
4. Net payment by Government on this installment..	\$ 96,105.19
5. Distribution of net funds:	
7/19 to Security First National Bank of Los Angeles .....	\$35,407.17
7/9 available for Palomas Land and Cattle Company's share:	
15% issued to Com- pany and your firm, its attorneys ....	\$ 5,311.08
85% to the Company .....	30,096.09
	<hr/>
	35,407.17
5/19 to this firm .....	25,290.85
	<hr/>
	\$ 96,105.19

Exhibit L

December 27, 1948.

Air Mail

Mr. James R. Garfield,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 Guardian Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Company.  
General Mexican Claim.

Dear Mr. Garfield:

I received today your letter of December 22, 1948, enclosing voucher (Form 406, Treasury Department) covering the fifth installment of 6.4% on the Palomas General Mexican Claim, the net proceeds of which appear to be \$102,512.20. As you know, Mrs. Letha L. Stephenson, who lives in California, is president of the company. However, P. W. Pogson is Vice-President and Percy W. Pogson, Jr. is Secretary-Treasurer. We were therefore able to complete the voucher at El Paso and now enclose the same to you herewith, duly executed. As you know our firm is entitled to 15% of the proceeds due Palomas Land and Cattle Company as attorneys' fees. Accordingly, for convenience, we respectfully request that in disbursing the amount due Palomas Land and Cattle Company you make two checks, one for 15% of the amount, payable to this firm and the Palomas Land and Cattle Com-

pany, and one for the balance payable to Palomas Land and Cattle Company.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

J. L. RASBERRY.

JLR:vb.

Enclos.

cc: Regular Mail

Mr. P. W. Pogson, Jr.,  
Mrs. Letha L. Stephenson,  
Mr. Henry T. Moore.

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Exhibit M

Law Office of

Garfield, Baldwin, Jamison, Hope & Ulrich  
1425 Guardian Building  
Cleveland 14, Ohio

February 4, 1949.

Mr. J. L. Rasberry,  
Burgess, Scott, Rasberry & Hulse,  
First National Bank Bldg.,  
El Paso, Texas.

In re: Palomas Land Cattle Company.  
General Mexican Claim.

Dear Mr. Rasberry:

The check covering the fifth installment on the



General Claim is being deposited today, in the amount of \$102,512.20. Distribution thereof is being made as indicated below:

1. Total amount of the award in this case is.....	\$1,686,056.00
2. The current installment, based on 6.4% of the award would figure .....	\$ 107,907.58
3. The charge made by the Government— 5% thereof .....	5,395.38
4. Net payment by Government on this installment..	\$ 102,512.20
7/19 to Security First National Bank of Los Angeles .....	\$37,767.65
7/19 available for Palomas Land and Cattle Company's share: 15% issued to Company and your firm, its attor- neys, being .....	\$ 5,665.14
85% to the Company .....	32,102.51
	<u>37,767.65</u>
5/19 to this firm .....	26,976.90
	<u>\$ 102,512.20</u>

The two checks, representing the Palomas Land and Cattle Company's share, are enclosed, and I trust that the manner of issuance will meet with your requirements. As in the past, it might be well to have the Vice-President and Secretary-Treasurer, who signed the voucher, endorse the check

payable to the Company and your firm. All good wishes,

Sincerely yours,

/s/ JAMES R. GARFIELD.

JRG:mb

cc to Mr. MM

Receipt of Copy Acknowledged.

[Endorsed]: Filed May 18, 1950.

[Title of District Court and Cause.]

AFFIDAVIT OF ARTHUR D. BALDWIN IN  
SUPPORT OF ORDER TO SHOW CAUSE

State of Ohio,

Cuyahoga County—ss.

Arthur D. Baldwin, being first duly sworn, deposes and says that he is the plaintiff in the above captioned action; that he is one of the persons named in a certain Trust Agreement dated October 29, 1943, by and between Palomas Land and Cattle Company, Security-First National Bank of Los Angeles, and James R. Garfield, Arthur D. Baldwin and Clare M. Vrooman, in which agreement said James R. Garfield, Arthur D. Baldwin and Clare M. Vrooman are named as Trustees; that a true and exact photostat of said agreement is attached as an exhibit to [98] this affidavit and marked "Exhibit 1"; that this affiant became associated as a partner with said James R. Garfield in the practice of law in 1918 and continued as a partner of said James R. Garfield until the death of said James R. Garfield

in 1950; that the said James R. Garfield and this affiant associated themselves with the said Clare M. Vrooman as partners in the practice of law in 1933, which partnership continued until the death of said Clare M. Vrooman in February of 1944; that affiant is personally familiar with the facts as hereinafter set forth or has such knowledge of said facts that the statements hereinafter set forth can be made as of his own personal knowledge.

Affiant further says that sometime subsequent to September 8, 1923, the exact date of which is now unknown, James R. Garfield and this affiant filed a claim for damages accruing to the Palomas Land and Cattle Company, a California corporation (hereinafter referred to as "Palomas"), as the owner of the capital stock of Compania Palomas, a Mexican corporation, which in turn owned the Palomas Ranch of approximately two million acres in Mexico south of El Paso, Texas, and near Juarez, Mexico; that said claim was based upon an order of nullification of the Diaz title under which said ranch was held, and said claim was presented pursuant to the Convention between the United States and Mexico dated September 8, 1923.

Affiant further says that subsequently another claim was filed in behalf of said Palomas with the General Claims Commission established pursuant to the General Claims Protocol between the United States and Mexico dated April 24, 1934; that no award had been made upon said claim as of the date of the expiration of the Commission created under such Protocol in 1937.

Affiant further says that under date of Novem-

ber 17, 1941, the Governments of the United States and the United Mexican States entered into a treaty providing for the payment of \$40,000,000 by Mexico to cover the settlement of claims specifically included in Public Law 814 of the 77th Congress, known as the Settlement of Mexican Claims Act of 1942; that in 1943 said Public Law was implemented by the appointment of a Commission for the adjudication of such claims; [99] that amongst the claims adjudicated by said General Claims Commission were awards in favor of said Palomas in the amounts of \$1,584,950.20 and \$101,105.80, respectively.

Affiant further says that he and his partners, James R. Garfield and Clare M. Vrooman, were the sole and only attorneys for Palomas in the prosecution of said claim until sometime during the year 1940; that Palomas, sometime during the year 1940, employed John L. Rasberry, an attorney-at-law practicing in El Paso, Texas, to handle, to some extent, the prosecution of said claim; that under date of May 15, 1941, affiant and his partners received a letter from said Palomas signed by Marshall B. Stephenson, as President, a photostat of said letter being attached hereto and marked "Exhibit 2"; that the person referred to in said letter, wherein it was said "there was nothing left for us to do but to proceed with the employment of other counsel." was said John L. Rasberry; that in reply to said letter said James R. Garfield advised said Marshall B. Stephenson by letter dated May 21, 1941, a photostat of which is attached hereto and marked "Ex-

hibit 3," that he might recognize associate counsel but he considered that his firm was still representing Palomas in the prosecution of said General Claim.

Affiant further says that subsequent to the exchange of said correspondence, said John L. Rasberry and Marshall B. Stephenson came to Cleveland to discuss with affiant and his partners the future representation of Palomas in regard to the prosecution of said claim, and that as a result of said conference a general division of the representation of Palomas was agreed upon, and on June 24, 1941, a letter was jointly dictated by the said James R. Garfield, John L. Rasberry and Marshall B. Stephenson to Palomas, a photostat of which letter is attached hereto and marked "Exhibit 4"; that the original of said Exhibit 4 was delivered to said Marshall B. Stephenson and copies thereof were delivered to John L. Rasberry in the presence of affiant and his partners.

Affiant further says that during the year 1941 and 1942 there was correspondence between Robert J. Sevitz, then Assistant Vice President of the [100] Security-First National Bank of Los Angeles, and now its Vice President, and the said John L. Rasberry, concerning general matters of Palomas and its relations with other corporations; that copies of said correspondence were sent to affiant or his partners or were examined by affiant and his partners prior to any award by the Commission.

Affiant further states that upon the publication of the award on June 15, 1943, notification of such



award was given to said Marshall B. Stephenson and John L. Rasberry as representatives of Palomas; that in July of 1943 said John L. Rasberry conferred with your affiant and said James R. Garfield at their offices in Cleveland and subsequent to said meeting said James R. Garfield and John L. Rasberry, as co-counsel for Palomas, went to Washington to discuss said award with members of the Commission and with members of a group who had purchased the stock of the Mexican corporation hereinbefore referred to and who claimed title to said award; that in the discussion concerning the title to said award said John L. Rasberry spoke as counsel for Palomas.

Affiant further says that in August of 1943, extended discussions were had between affiant and his partners and said John L. Rasberry concerning the advisability of filing a petition for review of said award; that thereafter it was agreed that no petition for review should be filed and on August 26, 1943, said award was made final and certified to the Treasury of the United States for payment; that immediately after said certification, said Clare M. Vrooman met with John L. Rasberry and Marshall B. Stephenson in El Paso, Texas, and from there said John L. Rasberry and Clare M. Vrooman went to Los Angeles to arrange for the preparation and execution of a proper power of attorney by Palomas in order to collect said award; that said arrangements were made through the efforts of John L. Rasberry, Clare M. Vrooman and William T. Coffin, an attorney-at-law practicing in Los Angeles; that



said power of attorney was subsequently filed with said Commission.

Affiant further states that on September 20, 1943, affiant and his partners received a check from the Treasury Department of the United States in the amount of \$480,525.96, representing a 30% payment upon said award; that thereafter, on the 21st day of September, 1943, an action was filed in the United States District Court of the District of Columbia by the Security-First National Bank of Los Angeles against Palomas, Henry Morgenthau, Jr., as Secretary of the Treasury, and W. A. Julian, as Treasurer of the United States, which action was known as Case No. 21295; that in the preparation of the pleadings in said case and in the taking of depositions therein, John L. Rasberry actively participated with affiant and his partners, which activities occurred in Washington, D. C., El Paso, Texas, and Los Angeles, California.

Affiant further says that simultaneously with the filing of said action in the District Court of the District of Columbia, another action was filed by the Security-First National Bank of Los Angeles against Palomas in the Superior Court of the State of California for the County of Los Angeles, which cause was known as Case No. 488283 on the dockets of said Court; that in the defense of said cause said John L. Rasberry actively participated with the affiant and his partners.

Affiant further says that depositions were started in Los Angeles on October 26, 27, 28, 29, 1943, which depositions were intended to be used in such litiga-

tion; that present at such depositions representing Palomas were said Clare M. Vrooman, a partner of affiant, John L. Rasberry and William T. Coffin; that before said depositions were completed the Agreement of Trust dated October 29, 1943, attached hereto as Exhibit 1, was agreed upon by the parties thereto as a settlement of the controversy existing between Palomas and the Security-First National Bank of Los Angeles; that said John L. Rasberry acted as counsel for Palomas in the negotiation and preparation of said Trust Agreement; that subsequent to the negotiation and execution of said Trust Agreement the litigation theretofore filed in the District Court of the District of Columbia and the Superior Court of the County of Los Angeles was dismissed, and the check of the Treasury of the United States, in the amount of \$480,525.96 was deposited by the Trustees named in said agreement in a trust account and collected. [102]

Affiant further says that on December 17, 1943, said Clare M. Vrooman, acting in behalf of the Trustees, forwarded by letter to John L. Rasberry the entire share due Palomas of the first installment of said award in the sum of \$177,035.88, a photostat of which letter is attached hereto and marked "Exhibit 5," and a photostat of said check, together with the endorsement of Marshall B. Stephenson as President of said Palomas Land and Cattle Company, is also attached hereto and marked "Exhibit 6"; that said John L. Rasberry received 15% of such amount as fees; that subsequently thereto a letter was received from said John L. Rasberry

dated January 10, 1944, requesting all subsequent checks to be payable to Palomas Land and Cattle Company and the firm of Burges, Burges, Scott, Rasberry & Hulse, of which firm said John L. Rasberry is a partner, a photostat of said letter being attached hereto and marked "Exhibit 7."

Affiant further says that in the fall of 1945 a second installment on said award became available and upon its collection said James R. Garfield, acting in behalf of said Trustees, wrote a letter, dated October 25, 1945, to John L. Rasberry, a photostat of which letter is attached hereto and marked "Exhibit 8," forwarding the share of Palomas in a single check made payable jointly to Palomas and the firm of Burges, Scott, Rasberry & Hulse in the amount of \$59,011.96, a photostat of said check being attached hereto and marked "Exhibit 9"; that said check shows the endorsement of Marshall B. Stephenson as President of Palomas and that of J. L. Rasberry as a partner of the firm of Burges, Scott, Rasberry & Hulse.

Affiant further says that subsequent to October 25, 1945, and prior to May 31, 1947, the exact date of which is not known to this affiant, said Marshall B. Stephenson died and he was succeeded as President of Palomas by his widow, one Letha L. Stephenson; that the other officers, so far as affiant knows, did not change after the death of said Marshall B. Stephenson.

Affiant further says that during the spring of 1947 a third installment upon said award became payable and in connection with the obtaining of the

requisite signatures to the voucher to be forwarded to the Treasury Department of [103] the United States in order to obtain said third installment, the Trustees received a letter from John L. Rasberry dated May 31, 1947, requesting that the amount due Palomas be disbursed in two checks, one payable jointly to Palomas and the firm of Burges, Scott, Rasberry & Hulse in the amount of 15% of the amount due Palomas, and a second check payable solely to Palomas for the balance thereof; that a copy of said letter was sent to Letha L. Stephenson; that a photostat of said letter of May 31, 1947, is attached hereto and marked "Exhibit 10;" that enclosed in the same envelope with said Exhibit 10 was another letter addressed to the Trustees from John L. Rasberry bearing date of May 31, 1947, and marked "Confidential," a photostat of which letter is attached hereto and marked "Exhibit 11;" that attached to said letter was a certain employment agreement and assignment executed by Marshall B. Stephenson as President of Palomas and Marshall B. Stephenson as President of Hueco Cattle Company addressed to Burges, Burges, Scott, Rasberry & Hulse, assigning 15% of any sums realized by Palomas out of its claim made under the provisions of Public Law 814 in the event such matters are disposed of by litigation or settled by agreement "after the filing of any suit or legal procedure"; that a photostat of said assignment is attached hereto and marked "Exhibit 12;" that in reply to said letters of May 31, 1947, attached hereto as Exhibits 10 and 11, said James R. Garfield,

as Trustee, under date of June 3, 1937, advised said John L. Rasberry that the disbursement of the funds collected from said claim "is to be made in accordance with the terms of the contract of October 29, 1943;" that a photostat of said letter is attached hereto and marked "Exhibit 13;" that on June 4, 1947, said John L. Rasberry replied to said Exhibit 13 by a letter to said James R. Garfield, a photostat of which letter is attached hereto and marked "Exhibit 14."

Affiant further states that prior to July 1, 1947, a third installment on said award was collected in the amount of \$104,113.96, which sum in turn was disbursed in accordance with the terms of said Trust Agreement, and the proceeds available for the benefit of Palomas were transmitted by a letter dated July 1, 1947, from your affiant, acting in behalf of said Trustees, to said John L. [104] Rasberry, a photostat of which letter is attached hereto and marked "Exhibit 15;" that there was enclosed in said letter a check of the Trustees payable to the Palomas Land and Cattle Company and Burges, Scott, Rasberry & Hulse, its attorneys, in the amount of \$5,753.66, which check represents 15% of the total amount due Palomas and which check bears the endorsement of P. W. Pogson as Vice President and Percy W. Pogson, Jr., as Secretary and Treasurer of the Palomas Land and Cattle Company, and the endorsement of John L. Rasberry as a partner of the firm of Burges, Scott, Rasberry & Hulse; that a photostat of said check, together with endorsements, is attached hereto and marked "Exhibit 16."



Affiant further states that in January of 1948 a fourth installment of \$96,105.19 became available upon said award and by letter dated January 22, 1948, said James R. Garfield, acting in behalf of said Trustees, requested John L. Rasberry to obtain the proper execution of the voucher by the officers of Palomas; that a photostat of said letter is attached hereto and marked "Exhibit 17;" that subsequently, on January 24, 1948, said John L. Rasberry returned said vouched duly executed by the Vice President and Secretary-Treasurer of Palomas and requested that 15% of the proceeds due Palomas be paid by a joint check to his firm and Palomas; that a copy of said letter was sent to Mrs. Letha L. Stephenson and P. W. Pogson, President and Vice President, respectively, of Palomas, and to Henry T. Moore, whom your affiant believes to be an attorney-at-law in Los Angeles, California, then representing the personal affairs of said Letha L. Stephenson; that a photostat of said letter dated January 24, 1948, is attached hereto and marked "Exhibit 18;" that thereafter said fourth installment was collected by said Trustees and on March 4, 1948, said Trustees delivered to John L. Rasberry, as the attorney for Palomas, the proceeds available to Palomas in the total amount of \$35,407.17; that a photostat of the letter transmitting said checks is attached hereto and marked "Exhibit 19;" that one of the checks enclosed in said letter marked Exhibit 19 was a check for 15% of the total amount due Palomas, payable to the order of Palomas and Burges, Scott, Rasberry & Hulse, which check was



in the amount of \$5,311.08 and which check was subsequently collected after endorsement [105] by Palomas by P. W. Pogson, Vice President, Percy W. Pogson, Jr., Secretary and Treasurer, and Burges, Scott, Rasberry & Hulse by John L. Rasberry, a partner; that a photostat of said check, together with all endorsements thereon, is attached hereto and marked "Exhibit 20."

Affiant further states that in December of 1948 a fifth installment upon said award became available in the amount of \$102,512.20 and a letter requesting the execution of the voucher for such payment was forwarded by the Trustees to John L. Rasberry on December 22, 1948, a photostat of which letter is attached hereto and marked "Exhibit 21;" that on December 27, 1948, said John L. Rasberry, as attorney for Palomas, returned said voucher duly executed by two of its officers and requesting a separate check for 15% of the proceeds available to Palomas to be made jointly payable to Palomas and the firm of Burges, Scott, Rasberry & Hulse; that a copy of said letter of John L. Rasberry was sent to P. W. Pogson, Letha L. Stephenson and Henry T. Moore; that a photostat of said letter is attached hereto and marked "Exhibit 22;" that on February 4, 1949, said fifth installment was received by the Trustees and disbursed to the parties entitled thereto under the terms of said Trust Agreement dated October 29, 1943; that the share payable to Palomas was transmitted by letter dated February 4, 1949, to said John L. Rasberry, a photostat of which letter is

attached hereto and marked "Exhibit 23;" that enclosed in said letter of February 4, 1949, was a check payable to Palomas and Burges, Scott, Rasberry & Hulse in the amount of \$5,665.14, which is 15% of the total amount due said Palomas, which check bears the endorsement of Palomas by P. W. Pogson, Vice President, and Percy W. Pogson, Jr., Secretary and Treasurer, and a further endorsement showing it to be deposited to the account of Burges, Scott, Rasberry & Hulse at the El Paso National Bank; that a photostat of said check, together with all endorsements, is attached hereto and marked "Exhibit 24."

Affiant further says that in December of 1949 a sixth installment upon said claim became available in the amount of \$99,308.70 and a voucher for such payment was sent to John L. Rasberry, as attorney for Palomas, under date of December 29, 1949, **requesting the execution** of said voucher as had been done in the past; that a photostat of said letter is attached hereto and marked "Exhibit 25"; that on January 3, 1950, John L. Rasberry wrote to the Trustees acknowledging receipt of said voucher and requesting a joint check payable to Palomas and his firm in the amount of 15% of the amount due Palomas, a photostat of said letter being attached hereto and marked "Exhibit 26"; that enclosed in said letter of January 3, 1950, was a copy of a letter from John L. Rasberry addressed to Henry T. Moore, which letter referred to the fact that the books and records of Palomas had been delivered to Letha Stephenson Metcalf, the widow of Marshall

B. Stephenson, and who had recently married Jess L. Metcalf, and that P. W. Pogson and Percy W. Pogson, Jr., are no longer officers of Palomas; that this is the first knowledge that the Trustees had of the change in marital status of said Letha Stephenson Metcalf or of the change in officers of Palomas; that the photostat of said letter to Henry T. Moore dated January 3, 1950, is attached hereto and marked "Exhibit 27."

Affiant further states that on January 20, 1950, said Trustees received a letter from Roland Rich Woolley, an attorney-at-law in Los Angeles, California, enclosing said voucher executed by Letha L. Metcalf, as President, and W. J. Clayton, as Secretary of Palomas, and asking of these Trustees certain questions concerning disbursement of the proceeds due Palomas in the past; that a photostat of said letter of January 19, 1950, is attached hereto and marked "Exhibit 28"; that enclosed therein was a letter signed by Letha L. Metcalf, as President, and W. J. Clayton, as Secretary of Palomas, addressed to the Trustees, advising said Trustees that Roland Rich Woolley had the authority to act for and represent said corporation and requesting that all checks and proceeds payable to said Palomas arising out of said award, be paid and delivered to 649 South Olive Street, Los Angeles 14, California, which is the office address of said Roland Rich Woolley, and further advising that any sum to be paid to Burges, Scott, Rasberry & Hulse would be paid by the corporation direct; that a photostat of said letter, dated January 19, 1950, is attached

hereto and marked "Exhibit 29"; that prior to [107] the date of the receipt of said Exhibits 28 and 29 the Trustees had no knowledge of the representation by said Roland Rich Woolley of said Palomas, or that there was any question by said Palomas, or its officers, of the manner in which the Trustees had disbursed the funds from the collection of the first five installments.

Affiant further says that on January 23, 1950, said Trustees received a letter from John L. Rasberry requesting us to disregard the request as contained in said letter of January 19, 1950, and to continue to disburse 15% of the amount due Palomas by a check jointly payable to Palomas and Burges, Scott, Rasberry & Hulse, and to deliver said check to said John L. Rasberry; that a photostat of said letter of January 23, 1950, is attached hereto and marked "Exhibit 30."

Affiant further states that on January 26, 1950, one L. R. Ulrich, in behalf of said Trustees, answered the letter of Roland Rich Woolley of January 19, 1950, a copy of which reply was sent to John L. Rasberry and a photostat of which letter is attached hereto and marked "Exhibit 31."

Affiant further says that on January 31, 1950, the Trustees received a second letter of inquiry from Roland Rich Woolley, a copy of which letter is attached hereto and marked "Exhibit 32"; that on February 6, 1950, one Vernon R. Burt, in behalf of the Trustees, replied to said letter of January 31, 1950; that a photostat of his letter is attached hereto and marked "Exhibit 33"; that the enclosures re-

ferred to in said Exhibit 33 are also attached hereto as Exhibits Nos. 10, 15, 16, 18, 19, 20, 22, 23, 24 and 26.

Affiant further states that on February 6, 1950, the Trustees received a letter from John L. Rasberry formally demanding that the Trustees deliver to the firm of Burges, Scott, Rasberry & Hulse, as assignees of Palomas, the sum of 15% of that portion of the sixth installment payable to Palomas, a photostat of which demand is attached hereto and marked "Exhibit 34."

Affiant further says that on February 13, 1950, the Trustees received a further letter from Roland Rich Woolley asking further questions of them, a photostat of which letter is attached hereto and marked "Exhibit 35"; that on [108] February 17, 1950, said Vernon R. Burt replied, in behalf of said Trustees, to said letter of February 13, 1950, a photostat of said reply being attached hereto and marked "Exhibit 36."

Affiant further says that on March 13, 1950, said Trustees completed the collection of the sixth installment and by a letter dated March 13, 1950, addressed to Palomas at 649 South Olive Street, Los Angeles, 14, California, a photostat of which letter is attached hereto and marked "Exhibit 37," transmitted 85% of the share due Palomas, which share amounted to \$31,099.31, and advised that the balance of 15% would be deposited with the Registry of the District Court of the United States, Southern District of California, Central Division; that thereafter, to wit, on March 30, 1950, your affiant filed



the instant action in this Court naming as parties thereto all persons making claim upon him as the surviving Trustee for the balance of the proceeds held by him from the collection of the sixth installment upon said award.

Further affiant sayeth not.

/s/ ARTHUR D. BALDWIN.

Sworn to Before Me and subscribed in my presence this 16th day of May, 1950.

[Seal] /s/ VERNON R. BURT,  
Notary Public.

My commission expires Jan. 3, 1953. [109]

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Exhibit No. 1

Agreement

This Agreement made as of the 29th day of October, 1943, by and between Palomas Land and Cattle Company, a California corporation, as Party of the First Part, hereinafter called "Palomas," Security-First National Bank of Los Angeles, a National Banking Association, as Party of the Second Part, hereinafter called "Bank," and James R. Garfield, Arthur D. Baldwin and Clare M. Vrooman, of Cleveland, Ohio, individually and as partners engaged in the practice of law under the firm name of Garfield, Baldwin & Vrooman, collectively as Party of the Third Part, hereinafter for convenience sometimes referred to as "Trustees,"



Witnesseth, that Whereas:

1. Under date of August 26, 1943, pursuant to the provisions of the Settlement of Mexican Claims Act of 1942, the American Mexican Claims Commission entered an award in favor of Palomas in the amount of \$1,686,056, and certified such award to the Secretary of the Treasury for payment to Palomas in accordance with the provisions of said Act of 1942, said award having been made on that certain claim of Palomas theretofore pending before the General Claims Commission of the United States of America and United Mexican States under Docket No. 2067 of that Commission;

2. The parties to this agreement assert conflicting claims to said award; the conflicting claims of Palomas and Bank are now the subject of that certain action in the District Court of the United States for the District of Columbia, entitled: "Security-First National Bank of Los Angeles, etc., Plaintiff, vs. Palomas Land and Cattle Company, etc., et al., Defendants," designated as Civil Action No. 21295 on the records of said Court. [110]

3. The parties hereto are desirous of resolving their conflicting claims to said award and of compromising and settling all differences among them in the manner hereinafter set forth;

Now, Therefore, in consideration of the premises and the respective undertakings on the part of the parties hereto, as hereinafter set forth, it is hereby agreed as follows:

## I.

Palomas and Bank shall, and do hereby, assign, transfer and set over unto the Trustees all of their respective rights, titles and interests in and to said award (including all sums paid or payable on said award), in trust nevertheless, and the Trustees shall, and hereby covenant and agree to, hold the same, together with all their rights, titles and interests in and to said award (including all sums paid or payable on said award), in trust for the following purposes:

(a) To collect, receive and receipt for all sums paid or payable on said award and the Trustees shall have full power so to do;

(b) To promptly, upon receipt of any sums paid or payable on account of said award, disburse the same as follows:

A seven-nineteenths ( $7/19$ ths) part to Palomas;

A seven-nineteenths ( $7/19$ ths) part to Bank;

The remaining five-nineteenths ( $5/19$ ths) part to Garfield, Baldwin & Vrooman, (the Trustees).

Pending actual disbursement of said funds by the Trustees, as above provided, the Trustee shall maintain the same in a trust account with the Cleveland Trust Company of Cleveland, Ohio, or with some other responsible bank or trust company. The Trustees shall execute this trust without charge. No expenses shall be incurred without first obtaining the written approval of Palomas and Bank. The Trustees shall not make or permit any substitution

under any power of attorney heretofore or hereafter given them to [111] enable them to effect collection of sums payable on said award without first causing the substitute to execute an undertaking to hold all funds coming to his hands in trust for the purposes and on the terms and conditions herein set forth.

## II.

Each party to this agreement shall, and does hereby, release and forever discharge each other party to this agreement, and Bank, in addition, shall and does hereby release and forever discharge Hueco Cattle Company, a Texas corporation, and Marshall B. Stephenson and each of them of and from all claims, demands, actions and causes of action of whatsoever character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof, except claims, demands, actions or causes of action based upon this agreement.

## III.

Each party hereto on the demand of any other party hereto shall execute and deliver such further instrument or instruments as may be necessary or convenient to enable the Trustees to collect any sums paid or payable on account of said award and to disburse the same as hereinabove set forth, or to otherwise effectuate the purposes of this agreement.

## IV.

In the event that all sums paid or payable on the aforesaid award shall not have been sooner collected and disbursed by the Trustees, as provided in Paragraph I hereof, the trust created in and by said Paragraph I shall terminate on the 28th day of October, 1964, and thereupon any funds in the hands of the Trustees collected on said award shall be forthwith disbursed in accordance with the provisions of Paragraph I hereof, and said award (to the extent of and including any sums unpaid on account thereof) shall be disposed of by the Trustees in such manner as the parties hereto may agree upon in writing, and failing such agreement, then the Trustees shall distribute said award (to the extent [112] of and including any sums unpaid on account thereof), discharged of any trust, as follows:

An undivided seven-nineteenths ( $7/19$ ths) part to Palomas;

An undivided seven-nineteenths ( $7/19$ ths) part to Bank;

The remaining undivided five-nineteenths ( $5/19$ ths) part to Garfield, Baldwin & Vrooman, (the Trustees).

## V.

Palomas, within thirty (30) days from the date hereof, shall cause to be executed, and shall deliver to Bank, a good and sufficient instrument or instruments wherein and whereby Palomas and its President, Marshall B. Stephenson, and each of them,

release and forever discharge Compania Palomas de Terrenos y Ganado, S. A., a Mexican corporation, hereinafter called "Compania Palomas," Nacional Ganadera, S.A. de C.V., a Mexican corporation, hereinafter called "Nacional Ganadera," Ben F. Williams, A. J. Kalin, W. C. Greene, F. A. Villalobos, Charles E. Wiswall and Alfonso Morales, and each of them, of and from all claims, demands, actions and causes of action of whatsoever character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof.

## VI.

Bank, within thirty (30) days from the date hereof, shall cause to be executed, and shall deliver to Palomas, a good and sufficient instrument or instruments wherein and whereby Compania Palomas, Nacional Ganadera, said Ben F. Williams, A. J. Kalin, W. C. Greene, F. A. Villalobos, Charles E. Wiswall and Alfonso Morales, and each of them, release and forever discharge Palomas, said Marshall B. Stephenson and Hueco Cattle Company, a Texas corporation, and each of them, of and from all claims. [113] demands, actions and causes of action of whatsoever character, now existing or hereafter arising and based upon any contract, agreement, instrument, transaction, matter, happening or thing of whatsoever nature to the date hereof.

## VII.

Any notice which any party may desire to give to any other party may be given by United States registered mail addressed to Palomas at 1100 First National Bank Building, El Paso, Texas, to Bank at its Head Office, Sixth and Spring Streets, Los Angeles, California, and to the Trustees at 1401 Midland Building, Cleveland, Ohio, subject to the right of any party to designate for itself a different address by notice similarly given.

In Witness Whereof, the parties hereto have executed this agreement as of the day and year first above written.

PALOMAS LAND AND  
CATTLE COMPANY,

[Corporate Seal.]

By /s/ MARSHALL B. STEPHENSON,  
President.

By /s/ SADIE BROWN,  
Secretary.

Party of the First Part  
and "Palomas."

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES,

[Corporate Seal.]

By /s/ ROBT. J. SEVITZ,  
Vice President.

By /s/ RANDALL BOYD,  
Asst. Sec.

Party of the Second Part  
and "Bank."



/s/ JAMES R. GARFIELD.

/s/ ARTHUR D. BALDWIN.

/s/ CLARE M. VROOMAN.

GARFIELD, BALDWIN &  
VROOMAN,

By /s/ JAMES R. GARFIELD,

Collectively Party of the

Third Part and "Trustees."

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Exhibit No. 2

May 15, 1941

Mr. James R. Garfield,  
Garfield, Cross, Daoust, Baldwin and Vrooman,  
Midland Building,  
Cleveland, Ohio.

Dear Mr. Garfield:

We beg to acknowledge receipt of your letter of April 24, 1941, and as we have previously advised, we definitely understood from Mr. Minchen that your firm had withdrawn from the handling of all matters in connection with the title to the Cia. Palomas properties in Mexico, including the handling of the general claim through the State Department in Washington. Insofar as we know, Mr. Minchen had been up to the time of his withdrawal handling the matter for your firm and was fully authorized to act for you. We, of course, presumed that he kept you fully informed of the situation, and when he stated there were no fees due, we understood that he was speaking not only for him-

self, but for his firm, as he undoubtedly had a right to do. From our viewpoint, there was, of course, nothing left for us to do but to proceed with the employment of other counsel, which we did, and they have been looking after the entire matter since that date.

As stated, we construed Mr. Minchen's withdrawal to be a complete withdrawal from the handling of any matters in connection with the titles of the Cia. Palomas in Mexico; including the prosecution of any so-called general claim, and we have acted on such construction, as we feel we had a right to do. Therefore, we think nothing should be done by you toward the prosecution of such general claim through the State Department, but the matter should be allowed to rest just as it is, so that our rights may not be jeopardized, for as stated the litigation begun upon Mr. Minchen's withdrawal is being now prosecuted in Mexico with the end in view of validating these titles.

Under the circumstances, we feel that the statement, submitted to us with the voucher covering the fourth installment on the special Mexican claims is out of line. Should you still feel that such statement should be paid we suggest that you furnish us with complete statement, itemized in detail as to dates and time spent in trips to Washington and Mexico City, as well as any incidental expenses which may have been covered by the statement rendered, limiting such statement to any time spent or expenses incurred prior to date of August 1, 1940.

Please let us hear from you at your earliest convenience.

Yours very truly,

PALOMAS LAND AND  
CATTLE COMPANY,

By .....

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Exhibit No. 3

Garfield, Cross, Daoust, Baldwin & Vrooman  
Midland Building  
Cleveland

May 21, 1941

Marshall B. Stephenson, Vice President,  
Palomas Land and Cattle Company,  
215 West Sixth Street,  
Los Angeles, California.

Dear Mr. Stephenson:

Because Mr. Minchen and I were doing all possible to forestall the proceedings of the Mexican Government in the despoilation of the Palomas Ranch in Mexico, and because I was not cognizant that dissension was brewing, I was, apparently, not alert to the real situation in connection with this matter. However, in studying the file today, it appears that, as early as March, 1940, when all documents were ordered by H. S. Stephenson to be sent to El Paso National Bank, steps had been taken to discontinue my services, although, as stated above,

I did not then view the matter in the same light as a retrospective examination of the file now reveals.

No advice came from you that my services were discontinued, and because I was unaware of dissatisfaction on your part, I proceeded to handle the matter in the same spirit of friendship and helpfulness as I had pursued in the past, taking what steps I felt were desirable to insure for the protection of the Palomas Ranch.

I became disturbed about the relationship between the company and our office after Mr. Minchen wrote to Mr. Villalobos on August 1, 1940, telling him that because of complete lack of cooperation and a disregard of all of Mr. Minchen's suggestions and recommendations, Mr. Minchen would be unable to assume further responsibility in the matter. I then wrote to you on August 23, 1940, indicating that if you had decided that my services were no longer required, you should have so informed me. I asked at that time to be advised regarding the matter. As you know, I received your reply on September 30, 1940, but even at that time, it was difficult for me to feel that Mr. H. S. Stephenson, with whom I had had most of my dealings, was aware of the situation. Perhaps I was mistaken in my interpretation of the actions taken.

While Mr. Minchen's letter of August 1, 1940, states that he had no claim to place for his time and expense incurred subsequent to March, 1940, I feel that my services during the period February 1, 1940, to at least August 1, 1940, are unquestionably

a proper charge. I have, as you requested, detailed the services performed by me during that period. On my trips to Washington and Mexico City, I have shown only the actual time consumed in conferences and have not attempted to bill you for any part of my travel time. Also, in order to keep the travel expenses to a minimum, I have always attempted to arrange the Washington conferences at a time when other professional engagements took me to that vicinity. At this time, I have no additional expenses assessable to the Palomas Company.

Mr. Minchen's withdrawal of his services in the despoilation matter in no respect affects the terms outlined in the additional contract executed by the Palomas Land and Cattle Company on December 14, 1935, covering the Special and General Mexican Claims. As you are aware, many years of effort are represented in those claims, all of which work was done on a contingent basis, as covered by your contract with us. You will, of course, be expected to settle those claims on the agreed percentage basis. At the present time, the company has in its possession the voucher covering the fourth installment on the Special Claim. If the present schedule holds, payments will be made each year until the award is consummated. On the General Claims:—I reported to you recently that there now appears to be a possibility of the two Governments' effecting lump sum settlement.

Although your letter was sent to me from El Paso, I have assumed that you wish me to address you at the company's office, and I am, therefore,

sending this letter to the Los Angeles office, with a copy to you at Columbus, New Mexico.

Sincerely yours,

/s/ JAMES R. GARFIELD.

JRG:mb

---

Exhibit No. 4

June 24, 1941.

Palomas Land and Cattle Company,  
El Paso, Texas.

Attention: Mr. Marshall B. Stephenson.

Gentlemen:

As a result of our conference today regarding the Palomas Land and Cattle Company situation, we have agreed to settle the outstanding account of our office, dated May 21, 1941, rendered to the Palomas Land and Cattle Company for \$500.00.

As to future work, I am to consider the question of whether or not the Palomas Land and Cattle Company has a claim that can be presented to the Agrarian Commission covering the loss that has resulted from the sale of the stock of the Compañia Palomas to the new holders at a figure of One Million Dollars. I will examine in Washington the files of the Palomas Land and Cattle Company General Claim and such other instruments as may be available and determine whether or not we have for the Palomas Land and Cattle Company a basis for the presentation of a claim under the existing Ag-



rarian Commission. There should be included in this claim, if possible, the loss sustained by the Palomas Land and Cattle Company by reason of the cloud upon its titles and the inability to dispose of its property at a figure commensurate with its real value. In addition thereto, there should be included in that claim any items of legal or other expenses which can be properly charged in the claim if presented. It has been my feeling that the limitation of the period of 1927 may not prevent the presentation of this claim for the reason that the cloud upon the titles was a continuing one and was evidenced by the action of the Mexican Government in January, 1940, seeking to declare a nullity of titles on the basis of the Obregon Decree and on the further claim that the titles since 1890 were subject to attack.

The settlement mentioned in the first paragraph of this letter includes everything pending at this time including the prosecution of any claims before the State Department or otherwise, but excepting the Special Claim upon which judgment has been rendered and in which we have a contingent interest.

It is understood that no further action will be taken with reference to the confirmation of titles and that in the prosecution of any claim before the Agrarian Commission no claim will be presented for lands which have been actually taken possession of by the agrarians, it being understood that the present owners of the Compania Palomas stock intend undertaking to confirm the titles to these lands.

In the prosecution of the Agrarian Claim, our compensation will be wholly contingent on the basis

of  $33\frac{1}{3}\%$  of recovery. As to expenses, I will give you an estimate of what those expenses would be by the month and year, and you are to advise me what can be done by you regarding the payment of those expenses and if I conclude that you do have a valid claim which can be so presented and we ultimately enter into agreement concerning it, you will be advised first concerning any expenses in connection therewith.

At the present time, the General Claim filed before the Original Claims Commission is in suspense. It is assumed that the presentation of the new claim before the Agrarian Claims Commission will take the place of the General Claim. In the event nothing can be done before the Agrarian Commission, the agreement now subsisting regarding presentation of the General Claim will continue, except, however, no expenses will be incurred by our office in connection therewith except upon your prior approval and the prosecution of such General Claim to the extent of confirming titles is waived.

Yours very truly,

JRG:mb

Two ccs to Mr. Rasberry.

[Marginal Note]: This letter dictated by Messrs. Rasberry, Stephenson & J. R. Garfield.

COPY

GARFIELD, BALDWIN & VROOMAN

99

December 17, 1943

L. Rasberry, Esq.,  
Borges, Burges, Scott, Rasberry & Hulse,  
First National Building,  
Paso, Texas.

Dear Jack: Re: Security vs Palomas

In accordance with our long distance telephone  
call late today, the Government check cleared this af-  
ternoon and I am therefore enclosing check payable to  
Palomas Land and Cattle Company in the sum of \$177,035.88.

With best wishes, I am

Sincerely yours,

V:IM  
cl.

*See Mr Rasberry of  
letter of  
1/10/44  
attorney  
that C  
to Mr  
Smith  
who  
read  
Mr  
approv  
at that  
time  
①*



Palomas Land and Cattle Co  
By: *Maxwell B. Vrooman*  
President

**PAID**  
BY BANK  
BANK OF AMERICA  
MEMPHIS, TENN.

**TERMINAL OFFICE**  
LOANS  
DEC. 23 1943  
18  
C. T. CO.

**88-15 DEC 21 1943 88-15**  
**PASO NATIONAL BANK**  
EL PASO, TEXAS  
PAY TO THE ORDER OF  
ANY BANK OR TRUST CO.  
ALL OTHER BANKS MUST BE INDICATED

PAY TO THE ORDER OF  
ANY BANK OR TRUST CO.  
ALL OTHER BANKS MUST BE INDICATED  
B-1

NO. \_\_\_\_\_  
TERMINAL OFFICE

**Garfield, Baldwin & Vrooman**

NUMBER  
**4098**

CLEVELAND, O. December 17, 19 43

.....PALOMAS LAND AND CATTLE COMPANY.....

\$ 177,035.88

ONE HUNDRED, SEVENTY SEVEN THOUSAND, THIRTY-FIVE AND 88/100..... DOLLARS

*Garfield*  
**The**  
**Cleveland Trust Company**

Garfield, Baldwin & Vrooman, Trustees

TERMINAL OFFICE





Exhibit No. 7

Burges, Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Bank Building  
El Paso, Texas

January 10, 1944.

Mr. Clare M. Vrooman,  
1401 Midland Building,  
Cleveland 15, Ohio.

Dear Clare:

I don't know whether I have acknowledged receipt of the Palomas check or not, but in any event it came as quite a Christmas present to both Marshall and our firm, and we appreciate the promptness with which the funds were disbursed. In this connection, I'd like to have you make the checks payable in the future to both the Palomas Land and Cattle Company and our firm as we have a contingent interest in the proceeds. Incidentally, have you any information as to when the next payment will be made.

I also want to thank you for the Christmas verse. I assume it is original and accordingly I want to compliment you on its wealth of thought and expression and its particular appropriateness at this time. I have pasted it away in my scrap book for future reference.

Let me wish for you and Mr. Garfield a prosperous and happy New Year.

Sincerely yours,

/s/ J. L. RASBERRY.

JLR/b.

## Exhibit No. 8

October 25, 1945.

Mr. J. L. Rasberry,  
 Burges, Scott, Rasberry & Hulse,  
 First National Bank,  
 El Paso, Texas.

In re: Palomas Land and Cattle Company  
 General Mexican Claim

Dear Mr. Rasberry:

There is enclosed check in the amount of \$59,-  
 011.96, payable to the Palomas Land and Cattle  
 Company and your firm, representing the share ap-  
 plicable to the Palomas Land and Cattle Company  
 of the second installment on the General Claim.

For your information, I am giving the following  
 details:

- |   |                |
|---|----------------|
| 1. Total award made by the Govern-<br>ment .....                | \$1,686,056.00 |
| 2. Second installment, based on 10%<br>of the award.....        | \$ 168,605.60  |
| 3. Less 5% charge made by the Gov-<br>ernment .....             | 8,430.28       |
| 4. Net Payment by the Government on<br>second installment ..... | 160,175.32     |
| 5. Distribution of net funds:                                   |                |
| 7/19 to Security First<br>National Bank of Los<br>Angeles ..... | \$59,011.96    |

7/19 to cover Palomas Land and Cattle Com- pany's share . . . . .	59,011.96
5/19 to this firm. . . . .	42,151.40

---

160,175.32

---



---

Sincerely yours,

.....,  
**JAMES R. GARFIELD.**

JRG:mb

cc to Mr. MM



*Palmer & Co. Cash*  
*My check to pay [unclear]*  
*Pay to the order of [unclear]*  
*Garfield, Baldwin, Jamison, Hope & Ulrich*  
*Attorneys*

EL PASO NATIONAL BANK  
 EL PASO, TEXAS  
 OCT 30 11 50 31 C L  
 EL PASO CLEARING HOUSE  
 BANK, BANKER OR TRUST  
 OR THROUGH THE  
 88 15 | 56-15

FEDERAL RESERVE BANK OF CLEVELAND  
 CLEVELAND, OHIO  
 OCT 25 1945  
 FEDERAL RESERVE BANK OF CLEVELAND

**GARFIELD, BALDWIN, JAMISON, HOPE & ULRICH**  
 CLEVELAND, OHIO October 25 19 45  
 No. **433**  
 PAY TO THE ORDER OF  
 ..... PLOMES LANE AND CATTLE COMPANY AND BURGESS, SCOTT, RASBERRY & HULSE, ITS ATTORNEYS. \$ 59,011.96  
 GARFIELD, BALDWIN, JAMISON, HOPE & ULRICH  
 DOLLARS  
 Garfield, Baldwin, Jamison, Hope & Ulrich, Trustees

THE NATIONAL CITY BANK  
 OF CLEVELAND





Exhibit No. 10

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Bank Building  
El Paso, Texas

May 31, 1947

Mr. James R. Garfield,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 Guardian Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Company  
General Mexican Claim.

Dear Mr. Garfield:

I received in due time your letter of May 26, 1947, enclosing Voucher (Form 406 Treasury Department) covering the third installment on the Palomas General Mexican Claim of 6.5%, the net proceeds of which appear to be \$104,113.96. Since Marshall's death, his widow, Letha L. Stephenson, who now lives in California, has been President of the company. However, P. W. Pogson is Vice-President and Percy W. Pogson, Jr., is Secretary-Treasurer. We were therefore able to complete the voucher at El Paso and now enclose the same to you herewith duly executed.

As you know, our firm is entitled to 15% of the proceeds due Palomas Land and Cattle Company as attorney's fees. Accordingly, for convenience, we respectfully request that in disbursing the amount due Palomas Land and Cattle Company you

make two checks, one for 15% of the amount, payable to this firm, and one for the balance payable to Palomas Land and Cattle Company.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.

JLR/vb

Encls.

cc: Mr. P. W. Pogson, Jr.

Mrs. Letha L. Stephenson

---

Exhibit No. 11

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law

First National Bank Building  
El Paso, Texas

May 31, 1947

Confidential

Mr. James R. Garfield,

Garfield, Baldwin, Jamison, Hope & Ulrich,

1425 Guardian Building,

Cleveland 14, Ohio.

Dear Mr. Garfield:

You will note my request in the attached letter that you divide the portion to which Palomas is entitled into two parts, one for our attorney's fee

of 15% and the other for the balance. We have no objection to the check evidencing our attorney's fees being payable to Palomas Land and Cattle Company as joint payee, but we do desire our firm named as a payee therein. In support thereof, we attach hereto photostat copy of our contract with Palomas Land and Cattle Company for your records and so that you, as Trustee, are advised of our interest in the portion belonging to Palomas Land and Cattle Company. We do not anticipate any argument about the matter for our portion thereof was paid without question during Marshall's lifetime. However, Marshall is dead and something may happen to me. Therefore, I want to get this set up so that there is a record thereof on file with you and so that our attorney's fees can be segregated by the Trustees.

My wife and I plan to attend the meeting of the American Bar Association in Cleveland in September of this year and we are looking forward to seeing you at this time.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.

JLR/vb

Encl.

## Exhibit No. 12

August 6, 1943.

Burges, Burges, Scott, Rasberry & Hulse,  
El Paso, Texas.

Confirming our verbal agreement, the undersigned hereby employs you to prosecute and assert the claims of undersigned to any award made to undersigned under the provisions of the convention between the United States of America and Mexico, dated November 19, 1941, and Public Law 814 adopted by the 77th Congress of the United States, and to defend any claims asserted to any such award by Ben Williams, et al., and the Security-First National Bank of Los Angeles. Undersigned agrees to pay you for any services rendered in this connection as follows:

1. Should the matters in controversy be settled by agreement prior to the filing of any suit by undersigned or the parties named, you shall receive 5% of any sums realized by undersigned or either of them.

2. Should the matters in controversy be disposed of by litigation or settled by agreement after the filing of any suit or legal procedure by undersigned or the other claimants mentioned, you shall receive 15% of all sums realized by undersigned or either of them.

3. It is understood that in arriving at your fee, any sum deducted from the award by the law firm of Garfield, Baldwin & Vrooman or ultimately

allowed them for the prosecution of such claims before the Mexican Claims Commission shall not be taken into consideration in arriving at the sums realized by undersigned.

4. It is also understood that undersigned shall pay all expenses incurred by you in the handling of this matter, including traveling expenses, telephone and telegraph bills, etc., and the fees of any out of state attorney or attorneys whom you may deem it necessary to employ for the purpose of prosecuting or defending any litigation instituted outside of the State of Texas to protect the undersigned.

Yours very truly,

PALOMAS LAND AND CATTLE COMPANY,

By /s/ MARSHALL B. STEPHENSON,  
President.

HUECO CATTLE COMPANY,

By /s/ MARSHALL B. STEPHENSON,  
President.

Approved:

BURGES, BURGES, SCOTT,  
RASBERRY & HULSE,

By /s/ J. L. RASBERRY.

Exhibit No. 13

June 3, 1947.

Air Mail—Special Delivery

Mr. J. L. Rasberry,  
Burges, Scott, Rasberry & Hulse,  
First National Bank Bldg.,  
El Paso, Texas.

In re: Palomas Land and Cattle Company  
General Mexican Claim.

Dear Mr. Rasberry:

This morning's mail brought to me a copy of your letter of May 31, 1947, addressed to me. Apparently, the original has been misrouted, as it has not come to me. With the original, no doubt, is the voucher to which you refer.

Relative to the disbursement of the proceeds of the voucher: You will recall that the distribution of the funds is to be made in accordance with the terms of the contract of October 29, 1943, by and between Palomas Land and Cattle Company, Security-First National Bank of Los Angeles, and the partnership of Garfield, Baldwin & Vrooman.

Perhaps by the time you receive this letter, you will have discovered the error, and will have sent me the voucher with the original letter.

With all good wishes,

Sincerely yours,

.....

JRG:mb



Exhibit No. 14

Burges, Scott, Rasberry & Hulse

Attorneys and Counsellors at Law

First National Bank Building

El Paso, Texas

June 4th, 1947

Airmail

Mr. James R. Garfield,

Garfield, Baldwin, Jamison, Hope & Ulrich,

1425 Guardian Building,

Cleveland 14, Ohio

Re: Palomas Land and Cattle Company

General Mexican Claim

Dear Mr. Garfield:

Received this morning your letter of June 3, 1947, with reference to the above matter. I sent to you the copy by airmail simply so that you would know the matter had been promptly attend to. Original of the letter and the voucher went forward to you on the same date by regular mail. I am sorry I confused you by overlooking to show that original letter and voucher followed by regular mail.

I do, of course, recall that the distribution of the funds is to be made in accordance with the terms of the contract of October 29, 1943. However, my confidential letter accompanying the voucher will explain our position and of course so long as Palomas Land and Cattle Company is joint payee in the check evidencing our attorneys' fees you are

taking no responsibility for the matter. In any event, we will appreciate your handling the matter in the manner suggested.

If you have not received the voucher by the time you receive this letter, advise me, and I will undertake to trace the original letter and voucher.

With kind personal regards and best wishes, beg to remain,

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.

JLR/ea

---

Exhibit No. 15

July 1, 1947.

Mr. J. L. Rasberry,  
Burgess, Scott, Rasberry & Hulse,  
First National Bank Bldg.,  
El Paso, Texas.

In re: Palomas Land and Cattle Company  
General Mexican Claim:

Dear Mr. Rasberry:

The check covering the third installment on the General Claim has just been received, in the amount of \$104,113.96. Distribution thereof is being made as indicated below:

1. Total amount of the award in this case is.....	\$1,686,056.00
2. The third installment, based on 6.5% of the award would figure .....	\$ 109,593.64
3. Less 5% charge made by the government.....	5,479.68

4. Net payment by government on third installment .....			\$ 104,113.96
5. Distribution of net funds:			
7/19 to Security First National Bank of Los Angeles .....		\$38,357.77	
7/19 available for Palomas Land and Cattle Company's share:			
15% issued to the Company and your firm, its attorneys ....		\$ 5,753.66	
85% to the Company .....	32,604.11		38,357.77
			<hr/>
5/19 to this firm .....		27,398.42	
			<hr/>
			\$ 104,113.96
			<hr/> <hr/>

The two checks, representing the Palomas Land and Cattle Company's share, are enclosed, and I trust that the manner of issuance will meet your requirements. Since the Vice President and Secretary-Treasurer signed the voucher, it might be desirable to ask that the endorsement of the check by the Palomas Land and Cattle Company carry the signatures of both of those officers on the check which has been made payable to your firm and Palomas. If you see any objection to such procedure, I shall be glad to hear from you regarding it. I am acting in Mr. Garfield's absence, and, of course, wish to do all that is necessary to insure for the disposition of the funds in accordance with the Agreement.

Mr. Garfield and I are happy to cooperate with you in this matter.

Yours very truly,

.....,  
A. D. BALDWIN.

ADB:mb  
cc to Mr. MM



PALOMAS LAND AND CATTLE CO.

By: *W. W. Pagan*  
Vice-President

Attest: *W. W. Pagan Jr.*  
Secretary and Treasurer

BURGES, SCOTT, RASBERRY & HULSE

By: *J. L. Harey*  
Its Attorneys.

PAY TO THE ORDER OF  
El Paso National Bank  
BURGES, SCOTT, RASBERRY & HULSE  
1463

GARFIELD, BALDWIN, JAMISON, HOPE & URlich.

CLEVELAND OHIO

July 1

1947

No.

757

PAY TO THE ORDER OF

..... PALOMAS LAND AND CATTLE COMPANY, (INC)  
BURGES, SCOTT, RASBERRY & HULSE, ITS ATTORNEYS. \$ 5753.66

DOLLARS

Garfield, Baldwin, Jamison, Hope & Ulrich, Trustees

Exhibit No. 16

96





Exhibit No. 17

January 22, 1948.

Mr. J. L. Rasberry,  
Borges, Scott, Rasberry & Hulse,  
First National Bank Bldg.,  
El Paso, Texas.

In re: Palomas Land and Cattle Company  
General Mexican Claim.

Dear Mr. Rasberry:

There is enclosed Form 406 of the Treasury Department, covering the fourth installment on the Palomas General Mexican Claim. The net proceeds available at this time, as shown by the voucher, will be \$96,105.19.

The procedure to be followed in executing the voucher and various affidavits is similar to that established on previous installments.

I am sending a copy of this letter to Mr. Coffin and a copy to Mr. Belcher, so that they may be informed of the issuance of the voucher covering this installment, which is figured at 6% (less the Government's charge of 5%).

When the papers have been executed, will you please have them come to me, and I shall follow the

matter through with the Department at Washington.

With all good wishes,

Sincerely yours,

/s/ JAMES R. GARFIELD,  
JAMES R. GARFIELD.

JRG:mb

cc: to Mr. MM

to Mr. Coffin, Lawler, Felix & Hall, Los Angeles, California.

to Mr. Belcher, c/o Jennings & Belcher, Los Angeles, California.

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Exhibit No. 18

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Bank Building  
El Paso, Texas

January 24, 1948

Air Mail

Mr. James R. Garfield,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 Guardian Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Company  
General Mexican Claim.

Dear Mr. Garfield:

I received today your letter of January 22, 1948, enclosing voucher (Form 406 Treasury Department)

covering the fourth installment of 6% on the Palomas General Mexican Claim, the net proceeds of which appear to be \$96,105.19. As you know, Mrs. Letha L. Stephenson, who lives in California, is president of the company. However, P. W. Pogson is vice-president and Percy W. Pogson, Jr., is secretary and treasurer. We were therefore able to complete the voucher at El Paso and now enclose the same to you herewith duly executed. As you know, our firm is entitled to 15% of the proceeds due Palomas Land and Cattle Company as attorneys' fees. Accordingly, for convenience, we respectfully request that in disbursing the amount due Palomas Land and Cattle Company you make two checks, one for 15% of the amount, payable to this firm and the Palomas Land and Cattle Company, and one for the balance payable to the Palomas Land and Cattle Company.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.

JLR:vb

Encl.

cc: Mrs. Letha L. Stephenson

Mr. P. W. Pogson, Jr.

Mr. Henry T. Moore [136]

## Exhibit No. 19

March 4, 1948.

Mr. J. L. Rasberry,  
 Burges, Scott, Rasberry & Hulse,  
 First National Bank Bldg.,  
 El Paso, Texas.

In re: Palomas Land and Cattle Company  
 General Mexican Claim:

Dear Mr. Rasberry:

The check covering the fourth installment on the General Claim has just been received, in the amount of \$96,105.19. Distribution thereof is being made as indicated below:

1. Total amount of the award in this case is.....	\$1,686,056.00
2. The current installment, based on 6% of the award would figure .....	\$ 101,163.36
3. The charge made by the Government— 5% thereof .....	5,058.17
4. Net payment by Government on this installment..	\$ 96,105.19
5. Distribution of net funds:	
7/19 to Security First National Bank of Los Angeles .....	\$35,407.17
7/19 available for Palomas Land and Cattle Company's share:	
15% issued to Com- pany and your firm, its attorneys ....	\$ 5,311.08
85% to the Company .....	30,096.09
	<u>35,407.17</u>
5/19 to this firm .....	<u>25,290.85</u>
	\$ 96,105.19

The two checks, representing the Palomas Land and Cattle Company's share, are enclosed, and I trust that the manner of issuance will meet with

your requirements. Since the Vice President and Secretary-Treasurer signed the voucher, it might be advisable to have the endorsement of the check by Palomas Land and Cattle Company carry the signatures of both of those officers on the check which has been made payable to your firm and Palomas.

With all good wishes,

Sincerely yours,

.....,  
JAMES R. GARFIELD.

JRG:mb

cc to Mr. MM





PALOMAS LAND AND CATTLE COMPANY

By *W. J. Jamison* President  
 By *W. J. Jamison* Treasurer  
 By *W. J. Jamison* SCOTT, RASBERRY &  
 By *W. J. Jamison* FEDERAL RESERVE BANK OF CLEVELAND

MAR 12 1948  
 PAY TO THE ORDER OF *W. J. Jamison*  
 \$ 5311.09  
 FEDERAL RESERVE BANK OF CLEVELAND  
 FOR DEPOSIT ONLY  
 SCOTT, RASBERRY &  
 100 NATIONAL BANK  
 EL PASO, TEXAS  
 MAR 10 1948  
 88-15

FOR THE ORDER OF  
 THE BANK OF AMERICA  
 MAR 10 1948  
 EL PASO NATIONAL BANK  
 EL PASO, TEXAS

Exhibit No. 20

GARFIELD, BALDWIN, JAMISON, HOPE & ULRICH

CLEVELAND, OHIO

March 7

1948

No. 889

PAY TO THE ORDER OF

PALOMAS LAND AND CATTLE COMPANY, AND SCOTT, RASBERRY & HOPE, TRUSTEES

\$ 5311.09

DOLLARS

Garfield, Baldwin, Jamison, Hope & Ulrich, Trustees



Exhibit No. 21

December 22, 1948.

Mr. J. Rasberry,  
Burges, Scott, Rasberry & Hulse,  
Attorneys and Counsellors at Law,  
First National Building,  
El Paso, Texas.

In re: Palomas Land and Cattle Co.  
General Mexican Claim

Dear Mr. Rasberry:

Herewith Voucher for Payment of Awards from the Treasury Department, covering the fifth installment on the Palomas General Mexican Claim. The net proceeds available on this installment, as shown by the voucher, will be \$102,512.20 (represents a 6.4% payment).

The procedure to be followed in executing the voucher and various affidavits is similar to that established on previous installments.

A copy of this letter is going to Mr. Coffin, Mr. Belcher, and Mr. Sevitz, so that they may be informed of the issuance of the voucher.

When the papers have been executed, will you please have them come to me, and I shall follow the matter through in the usual way.

With all good wishes for your happiness in the New Year,

Sincerely yours,

.....  
JAMES R. GARFIELD.

cc to Mr. Wm. T. Coffin, Lawler, Felix & Hall,  
Standard Oil Bldg., Los Angeles 5, Cali-  
fornia.

to Mr. Belcher, c/o Jennings & Belcher, Secur-  
ity Bldg., Fifth and Spring Sts., Los An-  
geles 13, California.

to Mr. Robt. J. Sevitz, Security-First National  
Bank of Los Angeles, Los Angeles 24, Cal.

Exhibit No. 22

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Building  
El Paso, Texas

December 27, 1948

Air Mail

Mr. James R. Garfield,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 Guardian Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Co.  
General Mexican Claim

Dear Mr. Garfield:

I received today your letter of December 22,  
1948, enclosing voucher (Form 406, Treasury De-  
partment) covering the fifth installment of 6.4%  
on the Palomas General Mexican Claim, the net  
proceeds of which appear to be \$102,512.20. As

you know, Mrs. Letha L. Stephenson, who lives in California, is president of the company. However, P. W. Pogson is Vice-President and Percy W. Pogson, Jr., is Secretary-Treasurer. We were therefore able to complete the voucher at El Paso and now enclose the same to you herewith, duly executed. As you know, our firm is entitled to 15% of the proceeds due Palomas Land and Cattle Company as attorneys' fees. Accordingly, for convenience, we respectfully request that in disbursing the amount due Paloma Land and Cattle Company you make two checks, one for 15% of the amount, payable to this firm and the Palomas Land and Cattle Company, and one for the balance payable to Palomas Land and Cattle Company.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.

JLR:vb

Encls.

cc: Regular Mail

Mr. P. W. Pogson, Jr.

Mrs. Letha L. Stephenson

Mr. Henry T. Moore [144]





Exhibit No. 23

+

February 4, 1949. (1)

Mr. J. L. Rasberry,  
Burgess, Scott, Rasberry & Hulse,  
First National Bank Bldg.,  
El Paso, Texas.

} In re: Palomas Land Cattle Company  
          General Mexican Claim.

Dear Mr. Rasberry:

The check covering the fifth installment on the General Claim is being deposited today, in the amount of \$102,512.20. Distribution thereof is being made as indicated below:

- 1. Total amount of the award in this case is \$1,686,056.00
- 2. The current installment, based on 6.4% of the award would figure.....\$ 107,907.58
- 3. The charge made by the Government - 5% thereof 5,395.38
- 4. Net payment by Government on this installment \$102,512.20

7/19 to Security First National Bank of Los Angeles..... \$ 37,767.65

7/19 available for Palomas Land and Cattle Company's share:  
15% issued to Company and your firm, its attorneys, being.....\$5665.14  
85% to the Company...32102.51

5/19 to this firm..... 26,976.90

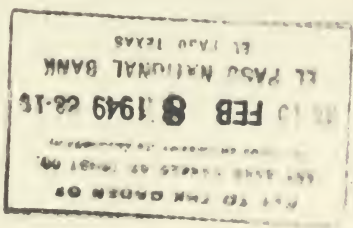
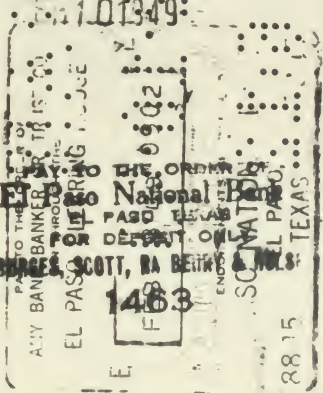
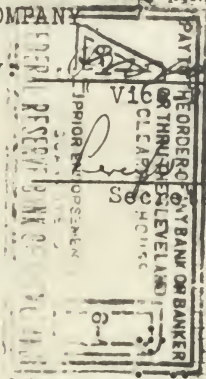
\$102,512.20



EXHIBIT NO. 24

PALOMAS LAND AND CATTLE COMPANY

By *[Signature]* Vice President  
*[Signature]* Secretary-Treasurer



GARFIELD, BALDWIN, JAMISON, HOPE & ULRICH

CLEVELAND, OHIO February 4 1946

No. 1046

..... PALOMAS LAND AND CATTLE COMPANY AND SUCCESSORS,  
SCOTT, HARBERT & HULSE, ITS ATTORNEYS.....

\$ 5665.14

DOLLARS

Garfield, Baldwin, Jamison, Hope & Ulrich, Trustees

PAY TO THE ORDER OF

THIS NATIONAL BANK OF CLEVELAND, OHIO

109



Exhibit No. 25

December 29, 1949.

Registered Mail

Mr. J. L. Rasberry,  
Burgess, Scott, Rasberry & Hulse,  
First National Building,  
El Paso, Texas.

In re: Paloma Land and Cattle Co.  
General Mexican Claim.

Dear Mr. Rasberry:

This morning's mail brought the enclosed voucher for Payment of Awards from the Treasury Department. This voucher covers the sixth installment on the Palomas General Mexican Claim; covering a 6.2% installment. The net proceeds on this installment, as indicated by the voucher, will be \$99,308.70.

The procedure to be followed in executing the voucher and various affidavits is similar to that established in the past, and it will be appreciated if you will return the documents to me when they have been properly signed.

A copy of this letter is going to Mr. Coffin, Mr. Belcher, and Mr. Sevitz, so that they may be informed of the issuance of this voucher.

With the Compliments of the Season,

Sincerely yours,

.....,  
JAMES R. GARFIELD.

cc to Mr. Wm. T. Coffin

to Mr. Coffin, Lawler, Felix & Hall, Standard Oil Bldg., Los Angeles 15, Cal.

to Mr. Frank B. Blecher, Jennings & Belcher, Security Bldg., Fifth and Spring Sts., Los Angeles 13, California.

Mr. Robert J. Sevitz, Security-First Natl. Bank of Los Angeles, Los Angeles 54, Cal. [145]

Exhibit No. 26

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Building  
El Paso, Texas

January 3, 1950

Mr. James R. Garfield,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 National City Bank Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Company  
General Mexican Claim.

Dear Mr. Garfield:

This will serve to acknowledge receipt of your letter of December 29, 1949, enclosing voucher covering the sixth installment on the Palomas General Mexican Claim covering a 6.2% installment, the net proceeds being the sum of \$99,308.70.

The attached letter to Mr. Henry T. Moore, an

attorney at law of Los Angeles, California, who is Mrs. Metcalf's Los Angeles legal adviser, is self-explanatory. The voucher was forwarded to Mr. Moore with the original of this letter.

I might add that Letha L. Metcalf is of course the former Letha L. Stephenson, widow of Marshall B. Stephenson, who several months ago married Jess L. Metcalf.

As you know, our firm is entitled to 15% of the proceeds due Palomas Land and Cattle Company as attorney's fees. Accordingly, when you have received the voucher and check has in turn been issued and paid, we respectfully request that for convenience you disburse the amount due Palomas Land and Cattle Company in two checks, one for 15% of the amount payable to this firm and the Palomas Land and Cattle Company, and one for the balance payable directly to Palomas Land and Cattle Company, and forward the two checks to us. We will then in turn have Palomas Land and Cattle Company endorse our check and deliver its check to Mrs. Metcalf.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.



## Exhibit No. 27

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Building  
El Paso, Texas

January 3, 1950

(Copy)

Mr. Henry T. Moore,  
705 Title Guarantee Building,  
411 West Fifth Street,  
Los Angeles 13, California.

In re: Palomas Land & Cattle Company  
General Mexican Claim.

Dear Henry:

We have this morning received voucher for payment of awards under the settlement of the Mexican Claims Act for the benefit of Palomas and others, as per copy of letter from James R. Garfield attached hereto.

Vouchers in regard to this matter in the past have been completed at El Paso but in view of the delivery of all records to Letha Stephenson Metcalf and the fact that Percy Pogson and his father, P. W. Pogson, are no longer officers of the company, the voucher mentioned will have to be executed in Los Angeles. I had a letter from Mrs. Metcalf, written December 28, 1949, from San Antonio in which she advised that she was flying back to Los Angeles on January 9th from Miami where she and her father are attending a cattlemen's con-

vention. I responded to the letter under date of December 29th but Mrs. Metcalf may not have received the letter for she did not give me the names of the officers of the company other than herself who is president, as I had requested. Upon receiving the voucher this morning, I undertook to locate her by telephone but she is on her way from New Orleans to Miami. Accordingly, I enclose the voucher to you herewith in the hope that the company has a vice-president who can execute the same, along with the [148] secretary, in Los Angeles. I am furnishing Mrs. Metcalf with a copy of this letter with the suggestion that she wire you authorizing the vice-president, if there is one, to execute the same in her absence. Otherwise, the execution thereof will have to be delayed until she returns to Los Angeles on January 9th. I have filled in the blanks in the form with as much information as I have and in view of the fact that I am familiar with the manner in which the form should be executed, make the following comments and suggestions thereon:

1. I have inserted the payee's name on the first page under the net amount. Underneath Mrs. Metcalf should sign on the line beginning with the word "Per" and her title of president should be added. Of course, if a vice-president executes it, the correct title should be inserted. In addition, the seal of the Palomas Land and Cattle Company should be affixed on this first page over the signature.

2. The affidavit of corporation appearing on the fourth page should be completed by inserting the names and addresses of either the president or vice-president and the secretary and, of course, each should sign at the proper place and the Notary should sign and add his seal.

3. The certificate as to authority, also appearing on the fourth page, should likewise be completed and signed by the secretary.

4. In addition, you will find attached to the voucher, "Supplemental Affidavit as to Corporation." It should be completed and executed by Letha L. Metcalf, if she is to execute the same. If not, it should be executed by the vice-president and of course it should be signed and the Notary should follow with his signature and seal. [149]

As soon as it is completed, please forward the same with the letter of transmittal to James R. Garfield at the address shown below, furnishing to me and the parties listed below a copy of such letter of transmittal so that they may be advised in the matter.

As indicated, I am furnishing Mr. Garfield, Mr. Belcher, Mrs. Sevitz and Mrs. Metcalf with a copy of this letter.

With kind personal regards and best wishes, beg  
to remain

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.

JLR:vb

Encls.

cc: Mr. James R. Garfield

Garfield, Baldwin, Jamison, Hope & Ulrich  
1425 National City Bank Building  
Cleveland 14, Ohio

Mr. Frank B. Belcher  
Jennings & Belcher  
Security Bldg.  
Fifth and Spring Sts.  
Los Angeles 13, California

Mr. Robert J. Sevitz  
Security-First National Bank of Los Angeles  
Los Angeles 54, California

Mrs. Letha L. Metcalf  
Roney-Plaza Hotel  
Miami Beach, Florida

Mrs. Letha L. Metcalf  
462 Mesa Road  
Santa Monica, California [150]

Exhibit No. 28

Roland Rich Woolley  
649 South Olive  
Los Angeles, Cal.

January 19, 1950.

Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 National City Bank Building,  
Cleveland 14, Ohio.

Attn.: Mr. James R. Garfield.

Dear Mr. Garfield:

Enclosed find letter of Palomas Land and Cattle Company signed by its President, Letha L. Metcalf, and attested to by its Secretary, Mr. Clayton, addressed to your firm under date of January 19, 1950, which is self-explanatory.

Also enclosed is the voucher with the Palomas Land and Cattle Company as the payee duly certified to by Mrs. Letha L. Metcalf, President, and Mr. J. E. Metcalf, Treasurer, and Mr. Clayton as Secretary. There is attached thereto a supplemental affidavit of Mrs. Metcalf as the president certifying that the Palomas Land and Cattle Company is a California corporation; that the charter has not expired; that the corporation has not been dissolved and that it is in good standing.

Would you please advise us whether or not your firm has been requested in the past to make any payments direct to Burges, Scott, Rasberry & Hulse, First National Bank Building, El Paso, Texas. If so, will you please further inform us

by what authority the said firm made such request and furnish us with photostatic copies of any papers or documents relating thereto at our expense. Mrs. Metcalf, President of the Palomas Land and Cattle Company, informs me that it has always been her understanding and she was advised by the late Marshall Stephenson that the said El Paso firm were to be paid an amount equal to five per cent of what she received and not fifteen per cent. She further advises me that she has never seen any paper or instrument to the contrary. In going through the minute book, I find nothing in the book which would justify any fifteen per cent being paid to Burges, Scott, Rasberry & Hulse at El Paso, Texas.

Mrs. Metcalf wants to meet every just and honorable obligation. If they are entitled to it and substantiate their claim by proper documentary evidence, then she will recognize it. They have never informed her in the past. It seems to be that she has not been kept sufficiently informed in the past when these vouchers have come through. They have been signed by other persons and have been sent to our office without her knowledge or consent and she has finally received a check for the remaining amount purporting to come to her without any statement or breakdown attached thereto. She has never been consulted.

In other words it appears that things have been arbitrarily done—or at least too much has been taken for granted. I think it proper that I speak to you to advise you frankly in the matter so that you

will understand the purpose of the letter enclosed

Thanking you for your cooperation, I remain,

Very sincerely yours,

/s/ ROLAND RICH WOOLLEY,  
ROLAND RICH WOOLLEY.

RRW:wjc

Encl.

Exhibit No. 29

January 19, 1950

Garfield, Baldwin and Vrooman  
1425 National City Bank Building  
Cleveland 14, Ohio

Gentlemen:

Referring to the Agreement dated October 29 1943, between the undersigned, Palomas Land and Cattle Company, a California Corporation, as first party, Security-First National Bank of Los Angeles, as second party, and your firm, as third party and as trustee:

Please be advised that the present officers and directors of the undersigned corporation are Letha L. Metcalf, President; J. E. Metcalf, Vice-President; and, W. J. Clayton, Secretary.

Please be further advised that no other person or persons have any authority or right to act for or represent the undersigned corporation in any matters, except its present counsel, who is Roland Rich Woolley, 649 South Olive Street, Los Angeles 14, California.

Please be further advised that all checks, pay-



ments and proceeds due and payable to said Palomas Land and Cattle Company, pursuant to the said Agreement of October 29, 1943, wherein it is provided that 7/19ths part of the funds to be received by reason of the award of August 26, 1943, in favor of Palomas Land and Cattle Company, are to be paid and sent direct to the office of Palomas Land and Cattle Company, at Room 915, 649 South Olive Street, Los Angeles 14, California.

At the present time there is no person at El Paso, Texas, who is authorized to speak for or act for the corporation, directly or indirectly, or at all.

Hereafter when and as you receive any payments from time to time by reason of the said award referred to and described in said Agreement of October 29, 1943, you are respectfully directed to remit to the undersigned corporation at the above address, its 7/19ths part thereof, together with your statement of breakdown and distribution as provided in said Agreement in your trustee capacity of the moneys received.

Any sum which is to be paid to Burges, Scott, Raspberry & Hulse will be paid by the undersigned corporation direct.

The undersigned corporation is advised that said El Paso firm has been causing to be paid to them an amount equal to 15% received by the corporation, which is an error. Any sum to be paid to them should not be in excess of an amount equal to 5%. The undersigned corporation is so informing you so you will be fully advised, and will also take that matter up directly with the said El Paso firm.

Will you also please advise the undersigned corporation at the above address whether or not the El Paso firm has requested you to send to them an amount equal to 15%, and if so, by what authority such request was made by them. It will be appreciated if you will fully advise us in this matter forthwith at said Los Angeles address.

The undersigned corporation encloses voucher for payment of award of appraisal certified under the settlement of the Mexican Claims Act of 1942, form 406, payee Palomas Land and Cattle Company, its address for the purpose of this voucher by virtue of said Agreement is in care of Mr. James R. Garfield, 1425 National City Bank Building, Cleveland 14, Ohio; docket No. 2067; last preceding payment made on voucher No. 1031699, paid January 31, 1949, amount of the award \$1,686,056.00. There is attached thereto supplemental affidavit of the President of the corporation for and in behalf of the corporation, duly acknowledged and notarized. You are requested to submit said voucher through the usual channels for payment, and upon receipt of payment, pursuant to said Agreement, retain for yourselves 5/19ths thereof; pay to the Security-First National Bank of Los Angeles 7/19ths thereof; and, pay direct to the undersigned corporation its 7/19ths thereof at Room 915, 649 South Olive Street, Los Angeles, California.

If there is any further assistance the undersigned corporation can give you in the matter please advise or contact our attorney, Roland Rich Woolley, Los Angeles, Calif.

Please accept our thanks for your kind cooperation.

Very truly yours,

PALOMAS LAND AND  
CATTLE COMPANY.

By /s/ LETHA L. METCALF,  
President.

(Letha L. Metcalf, formerly known as Letha L. Stephenson.)

Attest:

/s/ W. J. CLAYTON,  
Secretary.

Exhibit No. 30

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Building  
El Paso, Texas

January 23, 1950

Air Mail

Mr. James R. Garfield,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 National City Bank Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Company  
General Mexican Claim.

Dear Mr. Garfield:

I have a letter from Palomas Land and Cattle

Company, signed by Letha L. Metcalf (formerly Mrs. Marshall B. Stephenson), dated January 19, 1950, in which our 15% attorney's fees is for the first time questioned. In substance, Mrs. Metcalf says that it had always been her understanding that we were to be paid an amount equal to 5% and not an amount equal to 15%. She makes no mention of having forwarded the voucher to you but I am informed that in a telephone conversation with Mr. Pogson, she advised him a day or so ago that she had forwarded the voucher to you. She further states in her letter that Palomas has employed Roland Rich Woolley as attorney, so apparently she has fired Henry Moore who represented her at Los Angeles in the past and to whom I sent the voucher to be executed. Mr. Moore acknowledged receipt of the voucher under date of January 6th and a copy was sent to you. Accordingly, please advise me whether or not you have received the voucher, duly executed.

In view of the question raised as to our attorneys' fee, I have an idea, although Mrs. Metcalf does not so state, that she has instructed you to forward Palomas' part of the award, as well as all vouchers in the future, direct to Palomas, c/o Mr. Woolley. While I feel certain that you will do so in any event, I respectfully request, under the circumstances, that you continue disbursing the amount due Palomas Land and Cattle Company in two checks, one for 15% of the amount, payable to this firm and Palomas Land and Cattle Company, and one for the balance payable to Palomas Land

and Cattle Company. It is my plan to forward both checks to a bank in Los Angeles with instruction to deliver Palomas' part of the award upon endorsement of our check for 15%. I am afraid that if this isn't done, payment of our part will be delayed. Please also continue to send us the vouchers in order that we may in turn forward them, for I want to keep advised of the situation at all times. I feel that we are due this consideration, both because I have previously furnished you with a copy of the agreement setting apart 15% of all sums realized by Palomas to us as attorney's fees, but also because as attorney who represented Palomas, I have a lien on this award for our attorney's fees.

I will very much appreciate your cooperation.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

/s/ J. L. RASBERRY.

JLR:vb

Exhibit No. 31

January 26, 1950.

Roland Rich Woolley, Attorney,  
649 South Olive,  
Los Angeles, 14, California.

In re: Palomas Land and Cattle Company  
Mexican Claim.

Dear Mr. Woolley:

Mr. Garfield is away from the office at the present time because of illness, but in his absence, your letter of January 19, 1950, and the letter of January 19, 1950, from the Palomas Land and Cattle Company have been considered by his partners.

It is our obligation, when we have been placed on notice that another person has an interest in the proceeds of a settlement, to make checks jointly to the claimant and the other interested person. Therefore, the original checks in connection with the Palomas Land and Cattle Company Mexican claim, covering the 7/19 share of the total remittance, were made payable to the Palomas Land and Cattle Company and Burgess, Scott, Rasberry & Hulse, its attorneys. Later, the attorneys presented to this office a copy of their contract with the Palomas Land and Cattle Company indicating that their fees were to be computed on the basis of 15% of the amount available for Palomas Land and Cattle Company, and requested that the amount representing their fees be covered by a separate check.



Thereafter, this office wrote two checks, one payable to Palomas Land and Cattle Company and Burgess, Scott, Rasberry & Hulse, its attorneys, for 15% of the funds available on the Palomas share; and another check to Palomas Land and Cattle Company for the balance. The checks covering the fee portion have always been endorsed by the Palomas Land and Cattle Company, and signed by two of its officers i.e., by P. W. Pogson, Vice President, and Percy W. Pogson, Jr., Secretary and Treasurer. No objection having been raised by the Palomas Land and Cattle Company to the manner of remittance, we have so handled for the past several years.

The photostatic copy of the contract submitted to this office by Burgess, Scott, Rasberry & Hulse is enclosed, and you will observe that the fee is to be computed an 15%, rather than 5%, inasmuch as the matter for which the attorneys were employed became the subject of an action brought in the District Court of the United States, District of Columbia, Case 21295, entitled Security First National Bank of Los Angeles, vs. Palomas Land and Cattle Company, et al.

Because it is our thought that a review of the photostatic copy of the contract will indicate to you and your client, Mrs. Metcalf, that the 15% fee is proper, we felt you might not wish to incur the additional expenses in obtaining photostatic copies of the various letters which we received and wrote at the time of remitting the installments. However if you are still desirous of obtaining additional photostatic



data, we shall procure such for you upon your advice.

It has always been our understanding that the vouchers were executed in the manner followed to facilitate the handling of the matter, and to avoid delays. While we cannot say what information Mr. Rasberry turned over for the files of the Palomas Land and Cattle Company, we at all times gave the details to him to satisfy him that the proper amounts were being remitted for the Palomas account. If there remains any question in the minds of the present officers of the Palomas Land and Cattle Company that the proper amounts found their way into the accounts of Palomas Land and Cattle Company, we can supply the information to permit an audit of its records concerning this matter.

We shall await your further advice.

Yours very truly,

GARFIELD, BALDWIN,  
JAMISON, HOPE & ULRICH,

By .....

L. R. ULRICH.

LRU:mb

CC to Mr. MM

CC to Mr. Rasberry

Exhibit No. 32

Roland Rich Woolley  
649 South Olive  
Los Angeles 14, Cal.

January 31, 1950

Garfield, Baldwin, Jamison, Hope and Ulrich  
1425 National City Bank Building  
Cleveland 14, Ohio

Re: Palomas Land and Cattle Company  
Mexican Claim.

Gentlemen:

Your letter of January 26th last received in re the above matter. In the second paragraph of your letter you state as follows:

“It is our obligation, when we have been placed on notice that another person has an interest in the proceeds of a settlement, to make checks jointly to the claimant and the other interested person. Therefore, the original checks in connection with the Palomas Land and Cattle Company Mexican claim, covering the 7/19 share of the total remittance, were made payable to the Palomas Land and Cattle Company and Burgess, Scott, Raspberry & Hulse, its attorneys. Later, the attorneys presented to this office a copy of their contract with the Palomas Land and Cattle Company indicating that their fees were to be computed on the basis of 15% of the amount available for Palomas Land and

Cattle Company, and requested that the amount representing their fees be covered by a separate check."

I have been furnished with a photostatic copy of the paper relied upon by Burges, Scott, Rasberry & Hulse, dated August 6, 1943.

I have not been furnished with any resolution of the Board of Directors of Palomas Land and Cattle Company approving said paper, neither can I find any in the Minute Book of the corporation. Have you been furnished with such a resolution. If so, please furnish this office with a copy of same.

Will you please furnish me with any direct authorization you have, as Trustee, by reason of the agreement of October 29, 1943, to make payments to Berges, Scott, Rasberry & Hulse. I observe nothing in the said agreement of October 29, 1943, in your Trustee capacity, other than that you are to promptly, upon receipt of any sums paid or payable on account of said award, disburse the same according to the terms of that trust relationship. Will you please advise me what authority you have and relied upon to turn any of the funds of the Palomas Land and Cattle Company over to said firm, or to make any checks payable or co-payable to the said firm. [15]

Mr. Rasberry called me on the phone and advised me that you were furnishing him with a copy of my correspondence as well as copies of correspondence of Palomas Land and Cattle Company to you. That

is your privilege. We have no objection if you wish to do it that way. I am only endeavoring to ascertain the real facts in this matter and it is not my desire to deprive any lawyer of anything that he is legally entitled to.

May I further ask are you in possession of any assignment or purported assignment whereby the said Palomas Land and Cattle Company has assigned to said Burges, Scott, Rasberry & Hulse any interest in the Palomas award? If so will you please furnish me with a photostatic copy thereof.

Mrs. Metcalf the President would like to have a copy of the award settlement as of August 26, 1943, upon which the agreement of October 29, 1943, is based—that is, a photostatic copy. The company will pay for it.

You are again instructed in behalf of Palomas Land and Cattle Company that so far as I have been able to ascertain you are not authorized to turn over to any person or persons whatsoever any part of the 7/19th part of the Palomas award.

Thanking you for your cooperation, I am

Very truly yours,

/s/ ROLAND RICH WOOLLEY,  
ROLAND RICH WOOLLEY,  
Attorney for Palomas Land  
and Cattle Company.

RRW:m

Via Air Mail

Registered [160]

## Exhibit No. 33

February 6, 1950.

Mr. Roland Rich Woolley,  
649 South Olive Street,  
Los Angeles, California.

Re: Palomas Land & Cattle Company  
Mexican Claim.

Dear Mr. Woolley:—

We wish to acknowledge receipt of your letter of January 31, 1950.

In reply to your inquiry as to whether or not we have been furnished with any resolution of the Board of Directors of Palomas Land & Cattle Company approving the agreement of August 6, 1943, we are not in possession of any such resolution.

Recently we furnished you with a copy of a certain agreement between Palomas Land & Cattle Company and Burges, Scott, Rasberry & Hulse which we have construed to constitute an equitable assignment in the recovery of any proceeds of the claim. We have no other document in the form of an assignment.

We are enclosing photostat of the award settlement entered by the American Mexican Claims Commission dated August 29, 1943, showing an award in the principal sum of \$1,686,056. We have attached to this photostat a photostat of a letter from the Commission to Mr. James R. Garfield, dated June 15, 1943, announcing the appraisal of the Commission in which it states that the appraisal will be final unless an appeal is taken.

So that you will have before you a documentary history of our transactions in regard to this claim during the past few years, we are enclosing the following photostats:

- (1) Letter of 5/31/47 from Mr. J. L. Rasberry to Mr. Garfield;
- (2) Our letter of 7/1/47 to Mr. Rasberry;
- (3) Our check of 7/1/47 enclosed in the last mentioned letter;
- (4) Letter from Mr. Rasberry to Mr. Garfield dated 1/24/48,
- (5) Our letter to Mr. Rasberry dated 3/4/48;
- (6) Our check dated 3/4/48 referred to in the last mentioned letter;
- (7) Letter from Mr. Rasberry to Mr. Garfield dated 12/27/48;
- (8) Our letter to Mr. Rasberry dated 2/4/49;
- (9) Our check enclosed in the last mentioned letter;
- (10) Letter of Mr. Rasberry to Mr. Garfield dated 1/3/50.

You will note that each of the letters from Mr. Rasberry to Mr. Garfield requested that our firm forward 15% of the net proceeds due Palomas Land & Cattle Company to be set forth in a separate check payable jointly to Palomas Land & Cattle Company and Burges, Scott, Rasberry & Hulse. Copies of each of these letters were sent to Mrs. Letha L. Stephenson and P. W. Pogson, Jr. Copies of Mr. Rasberry's letters of January 24, 1948, and



December 27, 1948, were also sent to Mr. Henry T. Moore, who we understand was then acting as personal counsel for Mrs. Stephenson.

We also ask you to note that in each of our letters transmitting the checks representing the share of the Palomas Land & Cattle Company of July 1, 1947, March 4, 1948 and February 4, 1949, we requested endorsements of both the check payable only to Palomas Land & Cattle Company and the check payable jointly to Palomas Land & Cattle Company and Mr. Rasberry's firm by two officers of the company. This request was made because two officers had signed the vouchers that had been forwarded to the Treasury Department. We call your attention to the fact that the three enclosed checks made payable to Palomas Land & Cattle Company and Mr. Rasberry's firm were personally endorsed by the Vice President and Secretary-Treasurer of the Palomas Land & Cattle Company.

By virtue of the active participation of the officers of the company for the past four years in the matter of the disbursement of the proceeds of this claim, and by virtue of the fact that Mrs. Stephenson was fully aware of the conduct of Mr. Rasberry in requesting the check to be made payable to his firm, we assumed that our disbursements were meeting with the approval of all parties concerned.

We hope that the enclosures will be of assistance to you in straightening out the rights of the several parties. Please rest assured, however, that we stand ready to answer any further questions that you may have. In the meantime we are requesting a further



examination of our files to make sure that there are no other documents that might be of interest to you.

Very truly yours,

GARFIELD, BALDWIN, JAM-  
ISON, HOPE & ULRICH,

By .....

VRB/SW

Copy: Burges, Scott,  
Rasberry & Hulse.

Exhibit No. 34

Burges, Scott, Rasberry & Hulse  
Attorneys and Counsellors at Law  
First National Building  
El Paso, Texas

February 6, 1950.

Mr. L. R. Ulrich,  
Garfield, Baldwin, Jamison, Hope & Ulrich,  
1425 National City Bank Building,  
Cleveland 14, Ohio.

In re: Palomas Land and Cattle Co.  
Mexican Claim.

Dear Mr. Ulrich:

Supplementing my letter of January 31, 1950, and in further response to your letter of January 26, 1950, beg to formally demand that the Trustees, James R. Garfield and Arthur D. Baldwin, under no circumstances deliver our 15% part of the pro-

ceeds realized by Palomas Land and Cattle Company from the above claim to the Palomas Land and Cattle Company but, on the contrary, we must insist that our part of these proceeds be paid over and delivered to us by the Trustees.

It is our position that the contract dated August 6, 1943, photostat copy of which has heretofore been furnished you, entitles us to the delivery of these funds direct to us.

For your further information, Mrs. W. H. Burges, widow of our deceased partner, W. H. Burges, and Jane Burges Perrenot, daughter of our deceased partner, Richard F. Burges, as well as the surviving members of the partnership, to wit, Louis A. Scott, J. L. Rasberry and J. F. Hulse, have an interest in the 15% attorney's fee provided for by the contract mentioned.

With kind personal regards and best wishes, beg to remain

Yours sincerely,

/s/ J. L. RASBERRY,  
J. L. RASBERRY.

JLR:vb

Exhibit No. 35

Roland Rich Woolley  
649 South Olive  
Los Angeles, Cal.

14

February 13, 1950.

Garfield, Baldwin, Jamison, Hope & Ulrich  
1425 National City Bank Building  
Cleveland 14, Ohio

Re: Palomas Land & Cattle Company  
Mexican Claim.

Gentlemen:

Your letter of February 6th with the enclosures referred to therein received.

Referring to the photostatic copy of the letter dated May 31, 1947, will you please advise me whether or not the firm of Burges, Scott, Rasberry & Hulse sent you any resolution or special authority of Palomas Land and Cattle Company authorizing the sending of such letter on the part of Mr. Rasberry's firm and also whether or not you ever received from the Palomas Land and Cattle Company any resolution or action of its Board of Directors authorizing you to act in pursuance to the request contained in the said letter of May 31, 1947. I can find no such authorization directed to your firm nor to Mr. Rasberry's firm or to Mr. Rasberry personally authorizing or directing the writing of such letter referred to by the said Rasberry's

firm or the distribution of the money by your firm as requested by Rasberry's firm.

Inasmuch as Burges, Scott, Rasberry & Hulse were and have been at all times in a fiduciary relationship to Palomas Land and Cattle Company and the same applies to your firm insofar as the distribution of this money is concerned, my request for such information in behalf of the Palomas Land and Cattle Company is reasonable and justified.

I also note that the photostatic copies of the checks you enclosed dated July 1, 1947, March 4, 1948, and February 4, 1949, were made payable to "Palomas Land and Cattle Company and Burges, Scott, Rasberry and Hulse, its attorneys." Will you please advise me by what authority you caused said checks to be drawn as stated rather than directly to Palomas Land and Cattle Company. Being in the fiduciary position which you are to Palomas Land and Cattle Company and have been at all times I feel that my request is reasonable and justified.

As to the endorsements on the checks I note that none of them were ever presented to the then Mrs. Stephenson, now Mrs. Metcalf, the president of the corporation for signature. She advises me that she was never consulted relative thereto or even privileged to see the checks or to be consulted with respect to them. Again I refer you to the photostatic copy you furnished me dated January 24, 1948—which is a letter by Rasberry to your firm.

I make the same request and ask for the same

information relative to the contents of that letter. It is noted that that letter clearly discloses the possessory manner in which Mr. Rasberry was apparently acting. I have found no authority in the minute books of the corporation authorizing him to make such assumptions on his part. He was in a fiduciary relationship to the corporation as well as to the then Mrs. Stephenson, now Mrs. Metcalf, at the time he wrote that letter.

Referring to the photostatic copy of your letter dated March 4, 1948, to the Burges, Scott, Rasberry and Hulse firm, I respectfully ask for the same information and authority as I requested referring to the above previous letters.

Referring to the letter dated December 27, 1948, addressed by J. L. Rasberry to your firm, I respectfully request the same information relative to that letter and any action you took in connection therewith.

Referring to the letter dated February 4, 1949, addressed by you to the Burges, Scott, Rasberry and Hulse firm and signed by Mr. Garfield, I make the same requests as above stated.

Referring to the letter dated July 1, 1947, addressed to Burges, Scott, Rasberry and Hulse by A. B. Baldwin of your firm, I respectfully request the same information and data as requested with respect to the previous letters referred to.

Referring to the letter dated January 3, 1950, addressed to you and signed by J. L. Rasberry, I also make the same request in behalf of the Palomas

Land and Cattle Company as I have made for the previous letters mentioned.

In answer to my letter of January 31st last I note you state "we are not in possession of any such resolution" which I requested in my letter. It would appear there is none. I cannot find it in the minute books. I requested it from Mr. Rasberry. This morning I received an evasive letter from him stating that he didn't have the minute books and referred me to them. He knows whether there is any such resolution, but he has failed to answer the question directly.

Referring to the paper dated August 6, 1943, addressed to Burges, Scott, Rasberry and Hulse, El Paso, Texas, signed by Palomas Land and Cattle Company without a seal and without the secretary's signature of the company; and I can find no resolution in the minutes to support it, I respectfully differ with you that it constitutes an equitable assignment in the recovery of any proceeds in the claim referred to or any equitable assignment at all. I will go thoroughly into the matter.

Mrs. Metcalf has given me certain information with respect to the attitude and conduct of Burges, Scott, Rasberry and Hulse in this matter since the death of Mr. Stephenson. All I am interested in are the facts.

Will you please advise me when you were first informed that Mrs. Stephenson was the president of the Palomas Land and Cattle Company or were you ever so informed.

Will you please also inform me whether or not



any other resolution or resolutions of Palomas Land and Cattle Company were ever furnished you by Burges, Scott, Rasberry and Hulse or Palomas Land and Cattle Company or any other person or persons authorizing and directing you to distribute the money in the manner in which you have, all of which is contrary to that certain trust agreement dated as of the 29th of October, 1943, between Palomas Land and Cattle Company as the First Party, the Security First National Bank as the Second Party and your firm as the Third Party and referred to therein as the Trustee.

Your continued cooperation in this matter will be appreciated.

Very truly yours,

/s/ ROLAND RICH WOOLLEY,  
ROLAND RICH WOOLLEY,  
Attorney for Palomas Land  
and Cattle Company.

RRW:wjc



## Exhibit No. 36

February 17, 1950.

Mr. Roland Rich Woolley,  
649 South Olive Street,  
Los Angeles, California.

Re: Palomas Land & Cattle Company—  
Mexican Claim.

Dear Mr. Woolley:—

We wish to acknowledge receipt of your letter of February 13th.

For your information, we do not have in our possession any resolution, certified or otherwise, of the Palomas Land & Cattle Company authorizing the contract of the employment of the Rasberry firm, or directing the distribution of part of the award jointly to Palomas Land & Cattle Company and the Rasberry firm. You are in possession of those documents upon which we relied for distribution made to the date hereof.

In reply to your inquiry regarding our information concerning the presidency of Mrs. Stephenson, we wish to advise that in a letter from Mr. Rasberry to Mr. Garfield, dated May 31, 1947, there was the following statement:

“Since Marshall’s death his widow, Letha L. Stephenson, who now lives in California, has been president of the company. However, P. W. Pogson is vice president and Percy W. Pogson, Jr., is secretary-treasurer.”

From the note at the bottom of this letter it would

appear that Mrs. Stephenson received a copy of it. This apparently is the first information we had of her presidency. Unfortunately, Mr. Garfield is away from the office and he might have been personally familiar with the facts.

We have recently received from Mr. Rasberry a copy of your letter to him dated February 13, 1950. It now appears that Palomas Land & Cattle Company, represented by you, and Mr. Rasberry, have now reached such a position that it will be almost impossible for an immediate agreement concerning the distribution of the portion of the award now in the process of collection. You have made a demand upon us that the entire share payable to Palomas Land & Cattle Company be distributed by check payable solely to that company. Mr. Rasberry has made a demand upon us that we distribute 15% of the proceeds available to Palomas Land & Cattle Company by a check payable jointly to his firm and the company. Obviously, these two demands are inconsistent. We, as trustees, for the first time knowing of such a conflict, have no choice but to seek a judicial determination of the rights of the parties. Under the Federal Interpleader Act we could file an action in either the District Court of Los Angeles or El Paso. Recognizing Palomas Land & Cattle Company as our client and the Rasberry firm as a claimant of part of the funds of such client, we have determined to file this action in the District Court of Los Angeles. We are in the process of preparing the required papers and the action will be filed as soon as the proceeds are avail-

able. In the meantime, if you are able to come to any agreement with Mr. Rasberry, we would appreciate your immediate advice.

Very truly yours,  
 GARFIELD, BALDWIN, JAMISON, HOPE &  
 ULRICH,

By .....

VRB/SW

Exhibit No. 37

March 13, 1950.

Palomas Land and Cattle Company,  
 Room 915,  
 649 South Olive Street,  
 Los Angeles 14, California.

Gentlemen:

The check covering the current 6.2% installment on the General Mexican claim has now been deposited, in the total amount of \$99,308.70. Distribution is being made as shown in the computations below:

1. Total amount of the award in this case is.....	\$1,686,056.00
2. Current installment, based on 6.2% of the award would figure .....	\$ 104,535.47
3. The charge made by the government is 5% of the above installment .....	5,226.77
4. Net payment by Government on this installment..	\$ 99,308.70
5. The division of the above amount is:	
7/19 forwarded for the account of Security- First National Bank of Los Angeles.....	\$36,587.42
5/19 to this firm .....	26,133.86

Palomas Land and Cattle Company (being 7/19 of \$99,308.70 less 15%, \$5,488.11 which is being paid into the Registry of the United States District Court, Southern District of California, pending order of that Court on its distribution) .....	31,099.31
Deposited with the Registry of the District Court of United States, Southern District, pending order of that Court 15% of 7/19 of \$99,308.70, as explained in preceding item .....	5,488.11
	\$99,308.70

The check, payable to Palomas Land and Cattle Company, in the amount of \$31,099.31, (being 7/19 share of \$99,308.70 less \$5,488.11, 15% of the 7/19 share) is enclosed.

We trust that this method of handling the situation will meet with your approval.

Yours very truly,

GARFIELD, BALDWIN, JAMISON, HOPE & ULRICH,

By .....,  
L. R. ULRICH.

LRU:mb

cc to Mr. MM

Receipt of Copy Acknowledged.

[Endorsed]: Filed May 19, 1950.

[Title of District Court and Cause.]

ADDITIONAL AFFIDAVIT OF LETHA L.  
METCALF, IN OPPOSITION TO ORDER  
TO SHOW CAUSE

State of California,  
County of Los Angeles—ss.

Letha L. Metcalf, being first duly sworn, deposes and says: That she is President of the Palomas Land and Cattle Company, a California corporation, named as one of the defendants in the above-entitled action; that she is also the widow of Marshall B. Stephenson, who died on the 11th day of May, 1946; that she married the said Marshall B. Stephenson on the 16th day of April, 1943; and that at that time the said John L. Rasberry was the attorney for the said Marshall B. Stephenson and defendant Palomas Land and Cattle Company, and that to affiant's knowledge said attorney-client relationship existed continuously at least from April 16, 1943, to the date of the death of said Marshall B. Stephenson, and existed prior to any alleged agreement between the defendant, Palomas Land and Cattle Company, and the said John L. Rasberry; that said [182] John L. Rasberry continued as the attorney for affiant, defendant Palomas Land and Cattle Company and the Estate of affiant's deceased husband until the month of January, 1950;

That affiant has read the Affidavits of John L. Rasberry and of Arthur D. Baldwin filed herein.

That affiant does not at this time propose to answer all of the false or erroneous statements made in said Affidavits concerning the merits of the respective contentions of plaintiff and of the defendants, feeling as affiant does that certain of the matters disclosed in both of said Affidavits constitute breaches of fiduciary duty, both on the part of attorney and trustee in divulging obviously confidential matters, such as alleged statements in alleged income tax returns and demonstrating an obvious willingness on the part of attorney and trustee to collusively cooperate for a purpose other than the protection of client and beneficiary;

Affiant desires, however, to point out that in reference to the specific matter before this honorable court at this time, i.e., whether there is any justification in law or equity for the Trustee to withhold from Palomas Land and Cattle Company monies payable to it under a Trust Agreement, that the present claim, both on the part of the defendant law firm and the plaintiff trustee, that there was at any time an assignment to the defendant law firm of an interest in the award to Palomas Land and Cattle Company is a patent invention as becomes obvious from an examination of the documents submitted in their respective Affidavits by the said John L. Rasberry and the said Arthur D. Baldwin;

1. Both of said Affidavits demonstrate that prior to the death of affiant's husband, said Marshall B. Stephenson, there was no claim by either defendant



law firm or plaintiff trustee that any such assignment had been made.

2. That prior to the death of affiant's said husband, only one check was disbursed in each instance by plaintiff trustee [183] for the amount of Palomas Land and Cattle Company's share of said award;

3. That after the death of affiant's said husband, and "for convenience" (Exhibit 10—Affidavit of Arthur D. Baldwin), the said John L. Rasberry requested plaintiff trustee to disburse two checks, one directly to defendant law firm and the balance to defendant Palomas Land and Cattle Company; that affiant never received a copy of said letter and plaintiff trustee refused to accede to such request, calling the attention of the said John L. Rasberry that "the distribution of the funds is to be made in accordance with the terms of the contract of October 29, 1943." (Exhibit 13—Affidavit of Arthur D. Baldwin);

4. That the said John L. Rasberry's own statement demonstrates that funds which came to him were by way of "payment" and not by way of any "assignment." See, for example, his statement to plaintiff trustee in the so-called "confidential" letter of May 31, 1947, (Exhibit 11—Affidavit of Arthur D. Baldwin): "We do not anticipate any argument about the matter for our portion thereof was paid without question during Marshall's lifetime.";



5. The said John L. Rasberry further recognizes that the distribution by the plaintiff trustee is to be made "in accordance with the terms of the contract of October 29, 1943," (Exhibit 14—Affidavit of Arthur D. Baldwin), and states further, "So long as Palomas Land and Cattle Company is joint payee in the check evidencing our attorney's fee you are taking no responsibility for the matter. In any event we will appreciate your handling the matter in the manner suggested";

6. The letter of the said John L. Rasberry dated January 23, 1950, (Exhibit 30—Affidavit of Arthur D. Baldwin), demonstrates an unlawful attempt by the said John L. Rasberry to obtain possession of all checks coming to Palomas Land and Cattle Company in an attempt to use possession of those checks as a club to force [184] payment by defendant Palomas Land and Cattle Company;

7. The letter of the said John L. Rasberry dated February 6, 1950, (Exhibit 34—Affidavit of Arthur D. Baldwin), is the first claim that the so-called agreement of August 6, 1943, entitled said defendant law firm to direct delivery of any funds. As quoted above, plaintiff trustee had previously rejected such a contention, and its contention made at the present time that this claim of defendant law firm is asserted "in good faith" is, therefore, untenable;

That the matters raised by plaintiff trustee and defendant law firm in their respective affidavits constitute an attempt to have this honorable court

at this time examine into the merits of the controversy; that such an examination is improper at this time; that the only question before the court at this time is whether or not the present form of action is maintainable; that as pointed out in affiant's prior Affidavit, there are a multitude of claims and cross-claims existing between the parties to this litigation, including the plaintiff trustee, which cannot properly be tried in an Action of Interpleader, and without the presence of said plaintiff trustee;

That affiant further states that before the Treasury of the United States will disburse any monies on account of said award to Palomas Land and Cattle Company, it has always been necessary in the past, and will continue to be necessary from time to time in the future as said installments on said award become payable, for Palomas Land and Cattle Company to execute a United States Treasury Voucher covering the full amount of any and all installments on such award, and that no monies will be disbursed to any one without such voucher from the said Palomas Land and Cattle Company.

/s/ LETHA L. METCALF,

Subscribed and sworn to before me, this 8th day of June, 1950.

[Seal] /s/ ROLAND RICH WOOLLEY,  
Notary Public in and for  
Said County and State.

Affidavit of Service by Mail Acknowledged.

[Endorsed]: Filed June 9, 1950. [185]

At a stated term, to wit: The February Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 19th day of June, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable James M. Carter,  
District Judge.

[Title of Cause.]

For hearing (1) motion of defendant Palomas Land & Cattle Co., filed May 4, 1950, to dismiss the action for failure to state a claim against said defendant upon which relief can be granted; (2) order, filed March 30, 1950, directed to defendants to show cause, if any: (a) why the injunction of March 30, 1950, should not be made permanent; (b) why defendants should not be required to interplead, etc.; (c) why plaintiff should not be released and discharged from all further liability, etc.; (d) why plaintiff should not be allowed attorneys' fees, expenses and costs herein; (e) why this Court should not determine rights and claims of defendants herein; Edw. T. Butler, Esq., appearing as counsel for plaintiff; David Mellinkoff and Roland R. Woolley, Esqs., appearing as counsel for Defendant Palomas Land & Cattle Co.; Carl J. Shuck, Esq., appearing as counsel for all other defendants;

Attorney Mellinkoff argues in support of motion to dismiss and in opposition to Order to Show

Cause. Attorney Shuck argues for defendants other than Defendant Palomas Land & Cattle Co. Attorney Butler argues for plaintiff. Attorney Mellinkoff argues further.

Court orders cause stand submitted. [187]

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At a stated term, to wit: The February Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held in the Court Room thereof, in the City of Los Angeles on Thursday, the 22nd day of June, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable James M. Carter,  
District Judge.

[Title of Cause.]

The following matters argued on June 19, 1950, are decided as follows:

(1) The motion of the defendant, Palomas Land and Cattle Company, filed May 4, 1950, to dismiss the action for failure to state a claim against said defendant, upon which relief could be granted, is denied;

(2) The order to show cause filed March 30, 1950, returnable May 8, 1950, thereafter continued to June 19th is granted, and an order will be prepared by the plaintiff containing the following provisions: (a) that the injunction of March 30, 1950, be made permanent; (b) that the defendants be required to interplead; (c) that the plaintiff be

released and discharged from all further liability; (d) that the plaintiff be allowed a reasonable attorney's fee, in the sum of \$500.00 per stipulation of the parties, and expenses and costs herein; (e) that this action proceed to determine the rights and claims of the defendants herein. [188]

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[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED FINDINGS OF  
FACT, CONCLUSIONS OF LAW, PERMA-  
NENT INJUNCTION AND ORDERS

Comes now the defendant Palomas Land and Cattle Company, a corporation, and without acceding to the correctness of the Minute Order heretofore entered in the above-entitled matter, nor to the correctness of any of the Findings of Fact and Conclusions of Law, the Permanent Injunction, and Orders proposed by the plaintiff herein, hereby makes the following specific objections for the reasons herein stated to said proposed Findings of Fact, Conclusions of Law, Permanent Injunction, and Orders:

I.

Findings of Fact

1. Finding of Fact II. The Trust Agreement dated October 29, 1943, being in evidence before the Court as a part of [191] the Affidavit of Letha L. Metcalf, and as Exhibit "B" to the Affidavit of John L. Rasberry, and as Exhibit 1 to the Affidavit

of Arthur D. Baldwin Finding of Fact II, rather than adopting certain conclusions of the pleader as to the effect of said document should more properly find that said document as above referred to, was heretofore entered into.

2. Finding of Fact IV.

(a) The Letter Agreement of August 6, 1943, being in evidence before the Court as a part of the Affidavit of Roland Rich Woolley, and as Exhibit "A" to the Affidavit of John L. Rasberry, and as Exhibit 12 to the Affidavit of Arthur D. Baldwin, Finding of Fact IV, instead of adopting the conclusions of the pleader as to the meaning and effect of said letter, should more properly find that said document, as above referred to, was heretofore entered into.

(b) The portion of the Finding in lines 8 and 9, on page 4, reading as follows:

"Prior to the commencement of this action, defendant law firm notified plaintiff"

is vague and uncertain in that it cannot be ascertained by said language what notification in evidence is referred to.

In this connection, it would appear that the notification referred to is the two letters of May 31, 1947, in evidence as Exhibits 10 and 11 to the Baldwin Affidavit; the alleged agreement of August 6, 1943 (Exhibit 12 to the Baldwin Affidavit), was enclosed with the letter identified as Exhibit 11 to the Baldwin Affidavit. Such being the case, the Finding should further state either that the claim



of the defendant law firm was rejected when made, or that in reply to said notification, plaintiff wrote to defendant law firm the letter in evidence as Exhibit 13 to the Baldwin Affidavit.

If, on the other hand, the letter of February 6, 1950, in [192] evidence as Exhibit 34 to the Baldwin Affidavit, is intended to be referred to in said Finding, the Finding more properly should make specific reference to said letter.

(c) In lines 18 to 21, appearing on page 4 of said Finding, it is proposed that the Court find defendant's contention to be either an equitable or a legal assignment. The latter contention has never been made by the defendant law firm and the endeavor to insert such a contention in the Findings is to go beyond anything which could have been intended by the Trial Court.

(d) The proposed Finding in lines 21 to 22, on page 4, of said Finding of Fact IV reading:

“Such contention is tenable.”

is likewise clearly beyond the contention that was urged upon the Trial Court.

As clearly stated in the Memorandum of Points and Authorities filed by the plaintiff herein (page 4, lines 5 to 6), it was plaintiff's contention that:

“As the Jurisdictional Facts Are Pleaded and Admitted, Plaintiff's Right to Interpleader Is Absolute.”

It was plaintiff's contention urged upon the Trial Court and apparently accepted by the Trial Court, that if the plaintiff demonstrated that there was the requisite diversity of citizenship, jurisdictional



amount, and a fund deposited in Court to which two parties were laying claim, that an absolute right to interpleader was established without regard to the question of whether or not the contention of either party was, or was not, "tenable." Such being the position of the plaintiff, and apparently adopted by the Trial Court, the Finding should state just that, and omit any conclusion that "such contention is tenable."

(e) Insofar as the plaintiff is concerned, [193] the contention of defendant Palomas is set forth in a letter in evidence, to wit, Exhibit 29 to Baldwin Affidavit, and this letter should be referred to in Finding IV, rather than in the form of the Conclusions stated in lines 22 to 25, page 4, of said Finding of Fact IV.

### 3. Finding of Fact VII.

(a) The proposed finding in lines 22 to 25, page 5, of Finding of Fact VII, that the plaintiff has never made any claim to the \$5,488.11, is directly contrary to paragraph 3, of the prayer of plaintiff's complaint filed herein. Despite the fact that the Trust Agreement expressly provides:

"The Trustees shall execute this Trust without charge. No expenses shall be incurred without first obtaining the written approval of Palomas and Bank."

the plaintiff here has claimed and is claiming a portion of the trust funds in connection with an alleged expense incurred without the consent, written or otherwise, of this defendant.

(b) The attempt to have the Court find, in line 28, on page 5, of Finding VII, that the defendant law firm's claim has been asserted in good faith, is again contrary to the argument urged upon the Court by the plaintiff, and is subject to the same objection heretofore set out in paragraph 2 (d) above.

(c) The assertion in lines 28 to 29, on page 5, of paragraph VII, that the plaintiff "could not and cannot safely determine for himself which of said claims is right" is plainly contrary to the determination already made by the plaintiff trustee as evidenced by Exhibit 13 of the Baldwin Affidavit.

(d) The further assertion, in lines 3 to 5, page 6, of the proposed Finding VII, that the plaintiff is in danger of being harassed in two legal actions is simply without evidentiary support. [194]

4. Finding of Fact VIII. If this finding is intended to state that merely "by reason of the withholding of disbursement of said sum of \$5,488.11" the Trustee has not breached his Trust, the Finding should clearly so state. If, on the other hand, the Finding is intended as a general approval of all of the Trustee's actions as Trustee in connection with those trust funds, it is clearly beyond the scope of the evidence introduced.

## II.

### Conclusions of Law

1. Conclusion of Law II. If the proposed orders be carried out, there will not be any sum of \$5,488.11,

as mentioned in line 4 of this conclusion, concerning which litigation may be had.

2. Conclusion of Law III. If such a conclusion is to be made at all, there should be substituted for the words, "on account of" (line 9, page 7), the words, "to account for." At most, if the plaintiff prevails in this proceeding, he will be discharged of any further liability to account for the moneys deposited in the registry of the Court, inasmuch as the money is thus accounted for; but the proceeding in interpleader not being a general review of the Trustee's administration of the Trust, could not possibly purport to discharge the plaintiff of any liabilities in connection with said moneys which may, at some later time, be recognized on a full review of the Trustee's administration of the Trust here involved.

### III.

#### Orders

1. Paragraph 3, on page 3, of the proposed Orders partakes of the same vice present in Conclusion of Law II, as discussed above. [195]

2. Paragraph 4, of the proposed Orders, partakes of the same vice present in Conclusion of Law III, as discussed above.

Respectfully submitted,

ROLAND RICH WOOLLEY and  
DAVID MELLINKOFF,

By /s/ DAVID MELLINKOFF,  
Attorneys for Defendant Palomas Land and Cattle  
Company. [196]

Affidavit of Service by Mail

State of California,  
County of Los Angeles—ss.

Isabel E. Dyson, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county aforesaid; that affiant is over the age of eighteen years and is not a party to the within above-entitled action: that affiant's business address is: 211 South Beverly Drive, Beverly Hills, California; that on the 18th day of July, 1950, affiant served the within Objections to Proposed Findings of Fact, Conclusions of Law, Permanent Injunction and Orders on the plaintiff and on the defendants Louis A. Scott, John L. Rasberry and James F. Hulse, in said action, by placing two true copies thereof in an envelope addressed to the attorneys of record for said plaintiff at the office address of said attorneys, as follows:

Lawler, Felix & Hall; Wm. T. Coffin and Edward T. Butler,  
800 Standard Oil Building,  
Los Angeles 15, California;

and by placing two true copies thereof in an envelope addressed to the attorneys of record for said defendants Louis A. Scott, John L. Rasberry and James F. Hulse, at the office address of said attorneys, as follows:

Overton, Lyman, Prince & Vermille and Carl J. Schuck,  
733 Roosevelt Building,  
Los Angeles 17, California;

and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at the city where is located the office of the attorneys for the person by and for whom said service was made.

That there is a delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ ISABEL E. DYSON.

Subscribed and sworn to before me this 18th day of July, 1950.

[Seal] /s/ DAVID MELLINKOFF,  
Notary Public in and for  
Said County and State.

[Endorsed]: Filed July 19, 1950. [197]

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[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO DEFENDANT PALOMAS' OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, PERMANENT INJUNCTION AND ORDERS

Comes now the plaintiff above named and replies as follows to the objections filed herein by defendant Palomas Land and Cattle Company to the proposed Findings of Fact, Conclusions of Law, Permanent Injunction and Orders heretofore submitted by plaintiff to the Court:

Findings of Fact

Objections 1, 2 (b) and 2 (e)

It is elementary that in making findings of fact the Court is not required to do more than cover the ultimate factual issues. *Gay Games v. Smith* (1943) 7 CR 132 F. (2d) 930, 932; *Brown Paper Mill v. Irwin* (1943) 8 CR 134 F. (2d) 337, 338; *Skelly Oil Co. v. Holloway* (1948) 8 CR 171 F. (2d) 670, 673. As noted in *Brown Paper Mill Co. v. Irwin*, *supra*, findings of fact should be a "concise statement of the ultimate facts and not a statement, report or recapitulation of evidence from which such facts may be found or inferred." 134 F. (2d) 338.

Reference to the aforementioned elementary rule, we submit, should suffice to dispose of objections 1, 2 (b) and 2 (e). Thus, objection 1 is that the trust agreement is not set out in full in Finding II. The terms of that agreement are not in dispute. Copies of the agreement are included in the evidence. So far as the issue of interpleader is concerned, the only important terms of the agreement are those noted in Finding II, viz., that the subject of the agreement was an award of the American-Mexican Claims Commission in favor of defendant Palomas which was assigned to the plaintiff and his co-trustees and that the trustees were to collect sums payable on the award and disburse the same in stated proportions to defendant Palomas and others.

Again, objection 2 (b) is that Finding IV does not particularize the means whereby the notifica-



tion therein referred to was made nor the time of the notification. The dates and means of notification to the plaintiff of the conflicting claims asserted by defendant Palomas and defendant law firm are evidentiary matters. The ultimate fact, in so far as the issue of interpleader is concerned, is that prior to commencement of the action plaintiff was notified by defendant Palomas and defendant law firm of their respective and conflicting claims to the fund interpleaded.

Similarly, objection 2 (e) is that the particulars of defendant Palomas' contentions are not set forth in Finding IV. The important ultimate facts are those noted in Finding IV, viz., that [199] defendant Palomas denies the merits of the claim of defendant law firm and prior to the commencement of the action demanded that plaintiff pay to it the sum in controversy.

#### Objection 2 (a)

This objection is to the recital in Finding IV of the basis for the claim of defendant law firm. The gist of the objection seems to be that the recital amounts to a construction of the letter agreement referred to. That is not the case. The recital is only descriptive of the claim asserted by defendant law firm and in no sense a finding respecting the validity or otherwise of that claim or the letter agreement on which it is based.

#### Objection 2 (c)

This objection strikes us as frivolous. The right of plaintiff to interplead is the same whether the



assignment claimed by defendant law firm is equitable or legal. Finding IV as prepared refers to the claimed assignment as cognizable either at law or in equity. The finding was so prepared to avoid any fine distinction between law and equity and to avoid any unnecessary particularization of the contentions of defendant law firm.

#### Objections 2 (d) and 3 (b)

We do not understand what possible objection there can be to finding that the respective claims of defendant Palomas and defendant law firm are asserted in good faith and are tenable and, hence, are not frivolous or absurd. The documentary evidence, not to mention the pleadings, arguments of counsel and memoranda of authorities, demonstrates persuasively that each of the conflicting claims is asserted in good faith and is colorable and that a very real controversy exists as between defendant Palomas and defendant law firm. The cases noted in plaintiff's memorandum of authorities make it clear that the right to interplead conflicting claimants [200] does not depend upon the comparative merits of their respective claims. The fact, however, that the claims are colorable or tenable and not frivolous emphasizes the propriety of interpleader.

#### Objection 3 (a)

Manifestly, plaintiff's assertion of his statutory right to costs payable out of the fund interpleaded is not inconsistent with his disclaimer of any interest in the fund. If the case were otherwise, no stake-

holder could bring an action of interpleader unless he waived his right to recoup his costs from the fund.

#### Objections 3 (c) and 3 (d)

These objections are mere arguments respecting the evidence. The allegations of the complaint which defendant Palomas has admitted by its failure to interpose any answer afford abundant support for the findings to which objections 3 (c) and 3 (d) are directed. Moreover, the fact that the conflicting claims are tenable and are asserted vigorously makes it entirely clear that plaintiff could not resolve the conflict except at his peril and that unless he interpleaded the two claimants he would be vulnerable to a separate action by each.

#### Objection 4

This objection has no semblance of merit. A casual reading of Finding VIII suffices to show that it could not bear the construction which defendant Palomas fears.

### Conclusions of Law

#### Objection 1

What is pointed out *supra* respecting objection 3 (a) to Finding VII suffices to demonstrate that defendant Palomas' objection to Conclusion II is baseless. The rights of the conflicting claimants to the [201] fund interpleaded are subordinate to the right of plaintiff to recoup his costs from the fund.

Objection 2

This objection cannot be taken seriously. The instant action is not for an accounting but in interpleader. The purpose of the action is to release and discharge the plaintiff from liability on account of, i.e., with respect to, the sum deposited in the registry of the Court. It is entirely clear, and counsel for defendant Palomas of course realize, that Conclusion III simply effectuates the purpose of the interpleader and exonerates plaintiff with respect to the sum interpleaded but in no wise impairs the right of any defendant to assert any liability to render an accounting or other liability which he may claim to exist on the part of plaintiff.

Orders

Objections 1 and 2

These objections are the same as objections 1 and 2 to the conclusions of law which are dealt with supra.

Respectfully submitted,

LAWLER, FELIX & HALL,  
WM. T. COFFIN and  
EDWARD T. BUTLER,

By /s/ WM. T. COFFIN,  
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed July 20, 1950. [202]

At a stated term, to wit: The February Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the 25th day of July, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable James M. Carter,  
District Judge.

[Title of Cause.]

#### MINUTE ORDER

It Is Ordered that the objections filed by defendant Palomas Land and Cattle Company to the findings of fact, conclusions of law and order of injunction, etc., submitted by plaintiff, be and they are overruled; the court, however, has made the following additional conclusion, numbered "VII" and has added it to the bottom of page 7 of the findings and conclusions submitted by plaintiff:

"The findings of fact and the conclusions of law herein shall be effective only as supporting the "Injunction and Order directing interpleader, Discharging Plaintiff and Allowing attorneys' fees, expenses and costs" to plaintiff, and shall not prejudice or bind any of the defendants in any litigation between themselves following the making of the order of interpleader and the discharge of the plaintiff."

With the above addition, the court has signed the

findings of fact, conclusions of law, and permanent injunction and order in the form submitted by plaintiff. [205]

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Arthur D. Baldwin, plaintiff, having filed herein his complaint for interpleader and having deposited in the registry of this Court the sum of \$5,488.11 to abide the judgment thereof, and this Court having made its order temporarily restraining defendant Palomas Land and Cattle Company, a corporation (herein sometimes referred to as “defendant Palomas”), and defendants Louis A. Scott, John L. Rasberry and James F. Hulse, partners doing business under the firm name and style of Burges, Scott, Rasberry & Hulse (herein sometimes referred to as “defendant law firm”), [206] and each of their agents, attorneys, servants and representatives from prosecuting any proceeding in any state or Federal court based upon any of the claims of defendants to said sum of \$5,488.11, and this Court having ordered said defendants and each of them to show cause why the aforesaid restraining order should not be made permanent and why said defendants should not be required to interplead their claims and rights to said sum of \$5,488.11 and why the further relief prayed in the complaint should not be granted, and defendant Palomas hav-

ing appeared and having filed a motion to dismiss said complaint, and defendant law firm having appeared and having answered said complaint, and said order to show cause having duly and regularly come on for hearing before the Honorable James M. Carter, Judge of the United States District Court in Courtroom 3 of the Federal Building in the City of Los Angeles, State of California, on the 19th day of June, 1950, at 10:00 o'clock a.m., Messrs. Lawler, Felix & Hall and Wm. T. Coffin and Edward T. Butler by Edward T. Butler, Esquire, appearing for plaintiff, and Roland Rich Woolley and David Mellinkoff, Esquires, appearing for defendant Palomas, and Messrs. Overton, Lyman, Prince & Vermille and Carl J. Schuck by Carl J. Schuck, Esquire, appearing for defendant law firm, and the Court, having considered said complaint and said motion and said answer and the affidavits filed herein by the parties and having heard the argument of counsel and considered the memoranda of points and authorities submitted by the parties and being fully advised in the premises, now separately states its findings of fact and conclusions of laws as follows:

### Findings of Fact

The Court makes the following findings of [207] fact:

#### I.

This is an action of interpleader commenced on March 30, 1950, and brought under Section 1335 of Title 28 of the United States Code (June 25,



1948, c. 646, 62 Stat. 931). Plaintiff resides in the County of Cuyahoga, State of Ohio, and is a citizen of said state. Defendant Palomas Land and Cattle Company is a corporation organized under the laws of the State of California and is a citizen of said state, with its principal office in the County of Los Angeles in said state. Defendants Louis A. Scott, John L. Rasberry and James F. Hulse are partners engaged in the practice of law in the City of El Paso, State of Texas, under the firm name and style of Burges, Scott, Rasberry & Hulse, and said defendants and each of them are citizens of said State of Texas.

## II.

Prior to the commencement of this action and on October 29, 1943, defendant Palomas, Security-First National Bank of Los Angeles, a national banking association (herein sometimes referred to as "Security Bank"), plaintiff, James R. Garfield and Clare M. Vrooman made and entered into a certain trust agreement under the terms of which defendant Palomas and Security Bank assigned, transferred and set over to plaintiff and the said James R. Garfield and Clare M. Vrooman, as Trustees, all their right, title and interest in and to a certain award of the American-Mexican Claims Commission in favor of defendant Palomas. Under the terms of said trust agreement, said Trustees were to collect, receive and receipt for all sums paid or payable on said award and to disburse the sums collected as follows:

- A 7/19ths share to defendant Palomas;
- A 7/19ths share to Security Bank;
- A 5/19ths share to said Trustees. [208]

### III.

Thereafter and prior to the commencement of this action, said James R. Garfield and Clare M. Vrooman died and since their deaths plaintiff has been and is now the successor to their interests and the sole Trustee under said trust agreement.

### IV.

Prior to the commencement of this action, defendant law firm notified plaintiff that by virtue of a certain letter agreement dated August 6, 1943, between it and defendant Palomas, whereby the latter employed defendant law firm to render legal services in connection with the claim of defendant Palomas which was the basis of the aforementioned award of said American-Mexican Claims Commission, defendant law firm was and is entitled to receive, and defendant law firm demanded and has continued to demand that plaintiff as said Trustee pay to it, 15% of the sums payable to defendant Palomas under the terms of said award and said trust agreement. Defendant law firm contends that said letter agreement dated August 6, 1943, constituted an assignment cognizable either at law or in equity to it of 15% of all sums payable to defendant Palomas pursuant to said award and said trust agreement. Such contention is tenable. Also

prior to the commencement of this action, defendant Palomas notified plaintiff that defendant law firm is not entitled to 15% or any other part of the sums payable to defendant Palomas under the terms of said trust agreement and demanded that plaintiff as said Trustee pay to defendant Palomas all of said sums collected by plaintiff pursuant to the aforementioned award, to wit, a 7/19ths share of collections made on said award. Defendant Palomas contends that said letter agreement dated August 6, 1943, does not constitute an assignment cognizable in law or equity or otherwise. Such contention is tenable. [209]

## V.

Subsequent to plaintiff's notification of the afore-said conflicting claims and demands of defendant law firm and defendant Palomas and on or about March 13, 1950, plaintiff as said Trustee collected and received from the Treasurer of the United States the sum of \$99,308.70 representing a sixth installment payment upon said award. On March 14, 1950, plaintiff disbursed to Security Bank the sum of \$36,587.42 as a 7/19ths share of the sum so collected and disbursed to himself as said Trustee the sum of \$26,133.86 as a 5/19ths share of the sum so collected. On the same day, plaintiff disbursed to the defendant Palomas the sum of \$31,099.31 as a 7/19ths share of the sum so collected minus 15% of said share, to wit, the sum of \$5,488.11.

## VI.

Plaintiff has paid in to the registry of this Court said sum of \$5,488.11, the amount to which defendant law firm and defendant Palomas have asserted conflicting claims and demands, to abide the judgment thereof.

## VII.

Plaintiff as said Trustee or otherwise does not now have or claim nor did he prior or subsequent to the commencement of this action have or claim any right, title or interest in and to said sum of \$5,488.11. The conflicting claims and demands to said sum made by defendant law firm and defendant Palomas upon plaintiff as Trustee at the time of the commencement of this action were and since have been asserted in good faith and plaintiff could not and cannot safely determine for himself which of said claims is right and lawful and could not and cannot make payment of all or any part [210] of said sum to either defendant law firm or defendant Palomas without incurring a risk of liability to the other, and plaintiff at the time of the commencement of this action was and since has been in danger of being harrassed and damaged by the costs of litigation and risks of liability in two actions on a single obligation.

## VIII.

Plaintiff as said Trustee did not commit any breach of trust nor did plaintiff violate any fiduciary duty imposed upon him by said trust agreement by

reason of the withholding of disbursement of said sum of \$5,488.11 and the deposit of same as aforesaid in the registry of this Court.

IX.

Plaintiff has expended as costs and expenses in this proceeding the sum of \$. . . . . and has incurred a liability to pay to his counsel of record herein reasonable compensation for their services in connection with this proceeding. The sum of \$500.00 is reasonable compensation for those services.

From the foregoing findings of fact, the Court makes the following conclusions of law:

Conclusions of Law

I.

The Court has jurisdiction of this cause under Section 1335 of Title 28 of the United States Code (June 25, 1948, c. 646, 62 Stat. 931). [211]

II.

Defendant Palomas and defendant law firm should be required to interplead, litigate and settle between themselves their claims and rights to the sum of \$5,488.11 deposited by the plaintiff in the registry of this Court.

III.

The plaintiff should be released and discharged from all liability to defendants or any of them on account of said sum of \$5,488.11.

## IV.

This Court should retain jurisdiction over this cause and determine the validity and priority of the respective rights and claims of defendant law firm and defendant Palomas and direct the disposition of so much of said sum of \$5,488.11 deposited in the registry of this Court as may remain after payment therefrom of plaintiff's costs, expenses and attorney's fees.

## V.

Plaintiff is entitled to have paid to him by the Clerk of this Court out of said sum of \$5,488.11 deposited by him in the registry of this Court his costs in the amount of \$. . . . . and fees for his attorneys in the sum of \$500.00

## VI.

The defendants and each of them should be permanently enjoined and restrained from taking, maintaining or prosecuting against plaintiff any proceeding in any state or Federal court based upon any of the claims of defendants to said sum of \$5,488.11.

## VII.

The findings of fact and the conclusions of law herein shall be effective only as supporting the "Injunction and Order directing interpleader, Discharging plaintiff and Allowing attorneys' fees, expenses and costs" to plaintiff, and shall not prejudice or bind any of the defendants in any litigation between themselves following the making of the



order of interpleader and the discharge of the plaintiff. [212]

Dated this 25th day of July, 1950.

/s/ JAMES M. CARTER,  
District Judge.

The foregoing Findings of Fact and Conclusions of Law are approved as to form.

ROLAND RICH WOOLLEY and  
DAVID MELLINKOFF,

By .....,  
Attorneys for Palomas Land and Cattle Company,  
Defendant.

OVERTON, LYMAN, PRINCE & VERMILLE  
and CARL J. SCHUCK,

By /s/ CARL J. SCHUCK,  
Attorneys for Louis A. Scott, John L. Rasberry  
and James F. Hulse, Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed July 25, 1950. [213]

In the District Court of the United States, Southern  
District of California, Central Division

No. 11340-C (Civil)

ARTHUR D. BALDWIN, as Surviving Trustee  
Under a Certain Agreement of Trust Dated  
October 29, 1943,

Plaintiff,

vs.

PALOMAS LAND AND CATTLE COMPANY,  
a Corporation, and LOUIS A. SCOTT, JOHN  
L. RASBERRY and JAMES F. HULSE,  
Partners Doing Business Under the Firm Name  
and Style of Burges, Scott, Rasberry & Hulse,  
Defendants.

PERMANENT INJUNCTION AND ORDER  
DIRECTING INTERPLEADER, DIS-  
CHARGING PLAINTIFF, AND ALLOW-  
ING ATTORNEY'S FEES, EXPENSES  
AND COSTS

Arthur D. Baldwin, plaintiff, having filed herein his complaint for interpleader and having deposited in the registry of this Court the sum of \$5,488.11 to abide the judgment thereof, and this Court having made its order temporarily restraining defendant Palomas Land and Cattle Company, a corporation (herein sometimes referred to as "defendant Palomas"), and defendants Louis A. Scott, John L.

Rasberry and James F. Hulse, partners doing business under the firm name and style of Burges, Scott, Rasberry & Hulse (herein sometimes referred to as "defendant law firm"), [215] and each of their agents, attorneys, servants and representatives from prosecuting any proceeding in any state or Federal court based upon any of the claims of defendants to said sum of \$5,488.11, and this Court having ordered said defendants and each of them to show cause why the aforesaid restraining order should not be made permanent and why said defendants should not be required to interplead their claims and rights to said sum of \$5,488.11 and why the further relief prayed in the complaint should not be granted, and defendant Palomas having appeared and having filed a motion to dismiss said complaint, and defendant law firm having appeared and having answered said complaint, and said order to show cause having duly and regularly come on for hearing before the Honorable James M. Carter, Judge of the United States District Court in Courtroom 3 of the Federal Building in the City of Los Angeles, State of California, on the 19th day of June, 1950, at 10:00 o'clock a.m., Messrs. Lawler, Felix & Hall and Wm. T. Coffin and Edward T. Butler by Edward T. Butler, Esquire, appearing for plaintiff, and Roland Rich Woolley and David Mellinkoff, Esquires, appearing for defendant Palomas, and Messrs. Overton, Lyman, Prince & Vermille and Carl J. Schuck by Carl J. Schuck, Esquire, appearing for defendant law firm, and the Court, having considered said complaint and said motion

and said answer and the affidavits filed herein by the parties and having heard the argument of counsel and considered the memoranda of points and authorities submitted by the parties and being fully advised in the premises and having made and filed herein its findings of fact and conclusions of law, now Orders, Adjudges and Decrees as follows:

1. That the motion of defendant Palomas to dismiss the complaint be and it hereby is denied;

2. That defendant Palomas Land and Cattle Company, a corporation, and defendants Louis A. Scott, John L. Rasberry and James F. Hulse, partners doing business under the firm name and style of Burges, Scott, Rasberry & Hulse, and each of their agents, attorneys, servants and representatives be and they hereby are each of them hereby is permanently enjoined and restrained from taking, maintaining and prosecuting against plaintiff any proceeding in any state or Federal court based upon any of the claims of said defendants or any of them to the sum of \$5,488.11 heretofore deposited by plaintiff in the registry of this Court;

3. That defendants interplead and litigate their respective claims and rights to said sum of \$5,488.11;

4. That plaintiff be and plaintiff hereby is released and discharged from any and all further liability to defendants or any of them on account of said sum of \$5,488.11;

5. That attorney's fees for plaintiff's counsel be and are hereby allowed and fixed in the amount of \$500.00 and plaintiff's costs and expenses be and are hereby allowed and fixed in the sum of

\$53.12, and the Clerk is hereby ordered to pay to plaintiff, out of said sum of \$5,488.11, the sum of \$500.00 as and for said attorney's fees and the sum of \$53.12 as and for said costs and expenses;

6. That this Court retain jurisdiction of this cause and determine the rights of the defendants in and to the balance of said sum of \$5,488.11 remaining after payment of the items aforesaid and that this action proceed forthwith.

Dated this 25th day of July, 1950.

/s/ JAMES M. CARTER,  
District Judge. [217]

The foregoing Permanent Injunction and Order Directing Interpleader, Discharging Plaintiff, and Allowing Attorney's Fees, Expenses and Costs is approved as to form.

ROLAND RICH WOOLLEY and  
DAVID MELLINKOFF,

By .....,  
Attorneys for Palomas Land and Cattle Company,  
Defendant.

OVERTON, LYMAN, PRINCE & VERMILLE  
and CARL J. SCHUCK,

By /s/ CARL J. SCHUCK,

Attorneys for Louis A. Scott, John L. Raspberry and  
James F. Hulse, Defendants.

Judgment entered July 25, 1950.

Receipt of copy acknowledged.

[Endorsed]: Filed July 25, 1950. [218]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is Hereby Given that the defendant Palomas Land and Cattle Company, a corporation, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and orders entered in this case on July 25, 1950, in Judgment Book No. 67, page 268, entitled "Permanent Injunction and Order Directing Interpleader, Discharging Plaintiff, and Allowing Attorneys' Fees, Expenses and Costs," and each and every part thereof.

Dated: August 18, 1950, at Beverly Hills, California.

ROLAND RICH WOOLLEY and  
DAVID MELLINKOFF,

By /s/ DAVID MELLINKOFF,

Attorneys for Defendant Palomas Land and Cattle Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 23, 1950. [220]



[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

The defendant Palomas Land and Cattle Company, a corporation, having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the Judgment and Orders entered in this case on July 25, 1950, does hereby designate for inclusion in the record on the appeal herein, the complete record and all the proceedings and evidence in the action.

Dated: September 8, 1950, at Beverly Hills, California.

ROLAND RICH WOOLLEY and  
DAVID MELLINKOFF,

By /s/ DAVID MELLINKOFF,

Attorneys for Defendant Palomas Land and Cattle Company.

Affidavit of Service by Mail acknowledged.

[Endorsed]: Filed September 8, 1950. [222]

In the United States District Court, Southern  
District of California, Central Division

No. 11340-C Civil

Honorable James M. Carter, Judge, Presiding.

ARTHUR D. BALDWIN, as Surviving Trustee  
Under a Certain Agreement of Trust Dated  
October 29, 1943,

Plaintiff,

vs.

PALOMAS LAND AND CATTLE COMPANY,  
a Corporation, and LOUIS A. SCOTT, JOHN  
L. RASBERRY, and JAMES F. HULSE,  
Partners Doing Business Under the Firm Name  
and Style of Burges, Scott, Rasberry & Hulse,  
Defendants.

REPORTER'S TRANSCRIPT  
OF PROCEEDINGS

Los Angeles, California

Monday, June 19, 1950

Appearances:

For the Plaintiff:

LAWLER, FELIX & HALL, by  
EDWARD T. BUTLER, Esq.,

800 Standard Oil Building,  
Los Angeles, California.

For the Defendant Palomas Land and Cattle  
Company:

DAVID MELLINKOFF, Esq., and  
ROLAND RICH WOOLLEY, Esq.,

118 South Beverly Drive,  
Beverly Hills, California.

For the Defendants Burges, Scott, Rasberry  
and Hulse:

OVERTON, LYMAN, PRINCE &  
VERMILLE, by  
CARL J. SCHUCK, Esq.,

733 Roosevelt Building,  
Los Angeles, California.

The Clerk: No. 1 on the calendar. 11340-C Civil,  
Arthur D. Baldwin vs. Palomas Land and Cattle  
Company, and others. Hearing motion of defendant  
Palomas to dismiss, and hearing order to show  
cause.

Mr. Schuck: Your Honor, I am sorry I was  
delayed this morning. I was in Judge Peirson Hall's  
court, and he had several admissions that came  
ahead of us.

The Court: Mr. Butler, is it?

Mr. Butler: Yes, for the plaintiff Baldwin, your  
Honor.

Mr. Schuck: I am representing the defendants  
Burgess, Scott, Rasberry and Hulse.

The Court: I regret that I have not had a chance

to read this entire file. I was in Seattle and got back at 1:00 o'clock yesterday, and the only time I have had to look over any of this file has been this morning, so I doubt if I will be able to decide it, but I would like to have you argue what are the issues. I understand you have exchanged briefs, and you ought to be able to know pretty well what the issues are through the interchange of those briefs.

I have read the complaint and I think I have in mind the general factual situation, not taking into account the extensive affidavits. I see there are affidavits on file here [3\*] that I haven't had a chance to look at, but apparently Baldwin is a surviving trustee of a certain trust agreement. There is no argument that the other trustees are dead. He received some \$99,000 which, under the trust agreement, he is supposed to disburse 7/19ths to the defendant Palomas—is that correct?

Mr. Mellinkoff: Yes.

The Court: And 7/19ths to the Security Bank, and 5/19ths to the trustees, of which he is a survivor. Meanwhile, a law firm in Texas claimed that they have a letter assigning them a 15 per cent interest in the share of the defendant Palomas, dated August 6, 1943, which apparently antedated the trust agreement of October 29, 1943.

Mr. Mellinkoff: That is correct.

The Court: Then the trustee, out of this first chunk of money, being the first payment, as apparently there are going to be some more later on——

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\* Page numbering appearing at top of page of original Reporter's Transcript.

Mr. Mellinkoff: There have been some payments already, your Honor.

The Court (Continuing): —he pays himself the percentage he is entitled to, he pays the Security Bank the percentage they are entitled to, and he holds out the 15 per cent, the claimed 15 per cent of the amount that Palomas would be otherwise entitled to according to his calculation, amounting to five thousand dollars, and pays the balance to [4] Palomas, and then pays the \$5,488.11 into court; which on the face of it would look like the proper way for the trustee to do. That is about as far as I got in the file.

Mr. Mellinkoff: If your Honor please, a couple of additional facts which might throw some light on this situation are these:

The defendant Palomas Land and Cattle Company is generally referred to throughout the pleadings and the briefs as "Palomas," and this Texas law firm, of which the moving character is one Rasberry, is referred to as the "defendant law firm." In June of 1943, as appears from the affidavit filed by the plaintiff Baldwin, an award in favor of Palomas was proclaimed by the American-Mexican Claims Commission. I believe the chronology is important. That was in June of 1943.

The next chronological step is that in August of 1943, August 6th of 1943, the defendant law firm claims that defendant Palomas executed an agreement, which is in the files here, or a copy of it, under date of August 6, 1943, concerning a contingency fee in connection with this claim awarded by the

American-Mexican Claims Commission. The defendant law firm, in the affidavit of this Mr. Rasberry, likewise claims that actually there had been an oral agreement in June of 1943 covering the same matters mentioned in the letter of August, '43. However, no date is specified as to the precise day in June of [5] '43 that this alleged agreement was made. So it is not entirely clear from the affidavits, at least, exactly what the defendant law firm is relying on, whether an oral agreement or a written agreement.

The Court: If they were to the same tenor, what difference would it make? Is there any advantage in antedating their claim to June instead of August?

Mr. Mellinkoff: I think it has a bearing on the situation in connection with the question of an alleged assignment, and I am simply giving the chronology of the thing at this point.

In any event, in October of 1943, which is unquestionably subsequent to any claimed agreement by the defendant law firm with the defendant Palomas, this trust agreement was executed, and of course in the trust agreement there is no mention made of any assignment of anything to the defendant law firm.

In the voluminous affidavits which have been filed, both by the plaintiff trustee and the defendant law firm through Mr. Rasberry, there are many issues that are dragged into this thing concerning the administration of the trust, concerning what the true nature of the alleged agreement was, between the defendant Palomas and the defendant law firm. But



actually there is only one question before the court, and in two different forms it is the same question on the motion to dismiss [6] and on the order to show cause, and that question is simply this: Can the plaintiff trustee maintain an action in interpleader in this type of a situation?

The Court: Why not? You claim he is bound by the trust agreement to pay the money to your client, is that it?

Mr. Mellinkoff: That is correct.

The Court: Is that your sole argument boiled down to its essence and then dressed up?

Mr. Mellinkoff: I would say that is the heading of the argument, and there are sub points under that. Insofar as the motion to dismiss is concerned, the argument is addressed considering the complaint alone. Insofar as the order to show cause is concerned, the same argument is made, but now considering the affidavits that have been filed.

Insofar as the motion to dismiss is concerned, it appears on the face of the complaint that the trustee was obligated to pay certain moneys to the trustee's beneficiary, and that it has not paid those moneys. That is one fact that is clear from the complaint.

The Court: Well, you are talking about the moneys that you claim should have been paid to your client but instead were paid into court?

Mr. Mellinkoff: That is correct.

The Court: How does that differ from the barnyard [7] variety of interpleader involving an insurance policy? We will say I take out an insurance policy and there are trust provisions in the insur-

ance policy, the insurance company is bound, I think, to pay that money under the trust that I have created with the company, and maybe I have named somebody as beneficiary that claims to take the money, and somebody else comes in and says, "Wait a minute, I claim that money"; the insurance company has a right to come in and say, "We will hold the money, you and him fight."

Mr. Mellinkoff: If your Honor please, I think the short answer to that is that we are not here dealing with an insurance company, we are dealing with a trustee, and the duties of a trustee and the duties of an ordinary party to a contractual obligation are completely different.

Of all of the cases cited by the other parties to this action purporting to show that a trustee may maintain an action in interpleader under such circumstances as these, there is not a single case—and I have examined all of them—there is not a single case where against the objections of the beneficiary the trustee has forced his beneficiary under the trust to interplead and litigate a claim with a stranger to the trust.

The law of trust is that the trustee owes a duty of loyalty to his beneficiary, and a duty of loyalty to the trust, and the mere fact that some outsider comes in and says, [8] "Hey, I have got a claim here against the beneficiary," is not in and of itself sufficient cause for the trustee to say, "Well, now, I don't know who to pay, I am going to pay the money into court and force the beneficiary to litigate."

The Court: You say they have been able to cite no case where under the facts the trustee was successful in interpleading his beneficiary?

Mr. Mellinkoff: Against the objection of the beneficiary.

The Court: Do you have cases the reverse of the situation?

Mr. Mellinkoff: Not precisely on the point, except the case cited in the original memorandum, the Georgia case.

The Court: Can it be possible that this is one of those situations where it is so well accepted that you don't find authority on it?

Mr. Mellinkoff: I think the situation is that it is so well accepted that the trustee does not force his beneficiary to litigate that there are no cases on the subject.

The Court: In other words, your contention is it is well accepted in favor of your position?

Mr. Mellinkoff: If your Honor please, in Mr. Scott's famous treatise on trusts there are statements in that treatise to the effect that a trustee cannot safely pay out after he has received a notice of an assignment, if there is [9] such a notice of an assignment.

The Court: What Scott?

Mr. Mellinkoff: Scott on Trusts.

The Court: Austin Wakeman Scott?

Mr. Mellinkoff: Austin Wakeman Scott of the Harvard Law School, your Honor.

In that work, Mr. Scott states that if the trustee

is in doubt as to whom he should pay and feels that he is under a risk as to whom he should pay, if he pays one or the other, then he may come into court and ask for instructions. But the vital difference between such a situation and the present action is that if this action is permitted to prevail, the trustee is going to be out of this case.

If it is an action for instructions, the trustee will be a party to the litigation. But what the trustee is asking your Honor to do is to give them a complete exculpation for any of their acts in connection with these particular moneys and tell them to go hence.

The Court: How could you suffer? This trustee is not trying to deduct any moneys for expenses, is he?

Mr. Mellinkoff: If your Honor please, even though it is expressly forbidden by the trust, they are doing that in this very action. One of the items of relief that they are asking at the present time is that a reasonable charge to the present attorneys for the trustee be made a lien against [10] the moneys deposited in the registry of the court, and the trust instrument itself specifically provides that no expense will be incurred without the express written approval of the beneficiary.

The Court: That is the fee for the interpleader proceedings you are talking about?

Mr. Mellinkoff: That is correct, your Honor.

Now, again returning solely to the complaint and to the motion to dismiss in connection with the com-

plaint, the complaint on the one hand sets forth an assignment by Palomas and by the Security-First National Bank of the claims under the American-Mexican Claims award to the trustee, and they very explicitly set forth their assignment. But insofar as the claim of the defendant law firm, they don't allege that there has been any assignment. All that appears on the face of the complaint is that somebody has come up with a letter, and they don't set forth the letter in the complaint, but all they say is that pursuant to a certain letter the defendant law firm has claimed that it is entitled to receive a portion of the moneys going to Palomas.

The Court: Isn't that the ordinary situation? Plaintiff in an interpleader doesn't have to show that the claimant's cause of action is good or bad, he doesn't have to show that any legal proceeding has been instituted; all he has to show is that somebody has made a claim on that money, that he [11] is a stakeholder, that he doesn't want to get caught in the controversy, that he is willing to pay the money into court and let the people fight about it.

Mr. Mellinkoff: That is correct in the ordinary case of interpleader, which I believe this is not.

Here is a trustee who owes a duty of loyalty to his beneficiary, as set forth in our original memorandum, and under that duty of loyalty it is his duty to do everything he can for the beneficiary.

Now, were it not for the present action of the plaintiff trustee, there is nothing in any of these papers to show that there would, in fact, be litigation in this instance.



True, there is an argument as between the defendant law firm and the defendant Palomas, but there is nothing to indicate that there would be litigation.

Now, here is a trustee who is bound by a duty of loyalty to his beneficiary, who against the wishes of his beneficiary is forcing his beneficiary into court to carry on a protracted litigation.

Now, in this litigation the trustee will be absent, and if we choose to question whether or not the trustee has wrongfully dealt with the defendant law firm, if we choose to question the conduct of the trustee in the administration of this trust, that can have no effect in this litigation [12] once the trustee is removed from the action.

The Court: Aren't you building up a bogeyman there? The administration of this trust consisted only of the receipt of this money, the dividing of it in 19 parts, and the multiplying of seven or nine times 19, and a distribution. There has been no other administration of any other trust, outside of the receipt of that money?

Mr. Mellinkoff: It is precisely that phase of the administration that involves us in an argument here this morning, as becomes very apparent from the affidavit of Mr. Baldwin himself.

The argument that is made in connection with the order to show cause, as to the reason for the validity and the necessity of this interpleader action, is that here the beneficiary Palomas has made an assignment of a portion of the moneys due to



the defendant law firm, and therefore since there has been an assignment, the defendant law firm rightfully makes a claim to that money, the beneficiary says you shouldn't pay it, and therefore, interpleader.

Now, No. 1, that assignment is not pleaded in the complaint, but examining the documents involved, let us consider whether there is even a bona fide claim, which I believe is the fundament of the right to maintain interpleader, whether there is a bona fide claim of an alleged assignment of any portion of the Palomas award to the defendant law firm. [13]

Now, the fact of the matter is that both the trustee and the defendant law firm by their conduct, by their letters, which are in evidence in the affidavits filed by opposing counsel themselves, have declared that there is no assignment here, and the present claim of the trustee that there is an assignment and therefore he doesn't know how to pay out is something that has been made up for the purposes of this litigation.

Now, a couple of factual matters, your Honor: At the time that the award was originally made, the president of the defendant Palomas was a man by the name of Marshall Stephenson. His attorney at that time, both at the time of the award and prior to the award, so there was the attorney-client relationship, was this man Raspberry. Now, after the first payment, at the time the first payment became due and certain moneys were paid by the govern-

ment on the voucher of Palomas, paid to the trustee for distribution, a check was sent to Palomas for a portion of the funds due at that time. Subsequently, during the lifetime of Marshall Stephenson, a second payment became due, and this time the payment from the trustee, not from the government but from the trustee, was paid to the order of defendant Palomas and defendant law firm. It was after the second payment that Marshall Stephenson died.

Now, subsequent to the death of Marshall Stephenson and [14] before the third payment came due——

The Court: Is this the third payment that you are fighting about?

Mr. Mellinkoff: No, your Honor. This is the sixth payment.

But when the first payment came due to Palomas——

The Court: The third payment?

Mr. Mellinkoff: Yes, No. 3, after the death of Marshall Stephenson, the defendant law firm wrote a letter to the trustee. That letter is attached as Exhibit 10 to the affidavit of the plaintiff trustee.

In that letter, Exhibit 10 to the Baldwin affidavit, the present defendant Raspberry requests that when the next payment becomes due, that as a matter of convenience the amount coming to Palomas be split up into two checks, one to the defendant Palomas and one to the defendant law firm. As stated in letter, “\* \* \* Accordingly, for convenience, we respectfully request that in disbursing the amount

due you make two checks, one for 15 per cent of the amount, payable to this firm, and one for the balance payable to Palomas \* \* \*.”

On the face of that letter it appeared that a copy of that was going to Mrs. Letha L. Stephenson, who was the widow of Marshall Stephenson. She has since remarried and is known as Mrs. Metcalf. Now, this is significant, that in [15] this letter the defendant law firm asks that the check be split and that two checks be made as a matter of convenience, not as a matter of right, because there has been an assignment made, but solely as a matter of convenience.

Now, at the same time a second letter was sent by the defendant law firm, and this is Exhibit No. 11 to the Baldwin affidavit, and this letter goes to the trustee, but is marked “Confidential.” Not for the eyes of the beneficiary of the trust.

In this letter, the lawyers of Palomas say that they will be satisfied that there be two checks, one to Palomas and the other to Palomas and the law firm jointly. They don't say that they insist on two separate checks, one to Palomas and one to the law firm alone; they say they will be satisfied with the two checks, one to Palomas and one to Palomas and the defendant law firm, and they point out in this confidential letter that they want it this way so that they are going to be sure and get paid.

Now, this letter was never even allegedly transmitted to the beneficiary, and when the trustee got

this letter, this confidential letter from the attorney, the trusted attorney of the defendant Palomas, it knew at that time that this attorney Rasberry had something in mind which he was not communicating to his client, and which the trustee did not communicate to the beneficiary. [16]

The Court: You talk, Mr. Mellinkoff, as if this was a very dastardly plot of some kind. It looks to me like the ordinary dealings of an attorney who is trying to protect a fee that the firm had earned. Where is the insidious result that would flow from this thing? Palomas had only so much money coming. The firm claims 15 per cent of what Palomas got. In Stephenson's life time they got the 15 per cent. Stephenson died, and they want to be sure they get the 15 per cent in the future.

Mr. Mellinkoff: That is right. Actually, the question before the court in connection with this hearing boils down to this: Not is the defendant law firm entitled to be paid anything or not, but are they entitled to be paid directly by the trustee, or do they simply have a claim for attorney fees, the same as any other lawyer has against a client, against the client.

What they are saying now is that "We have a right to get this money directly from the trustee," and we are replying to that, your Honor, that there is no right to get this money directly from the trustee. If there is any claim, you have a claim for attorney's fees. And the fact of the matter is, your Honor, that that is precisely what the trustee re-

plied when they were told of this, and that reply is Exhibit 13 to the Baldwin affidavit, when the trustee replied to Mr. Rasberry: "You will recall that the distribution of the funds [17] is to be made in accordance with the terms of the contract of October 29, 1943," and the trustee at that time refused to make payment direct to the defendant law firm. And, as a matter of fact, Mr. Rasberry recognized that, and in his letter, which is Exhibit 14 to the Baldwin affidavit, he says, "I do, of course, recall that the distribution of the funds is to be made in accordance with the terms of the contract of October 29, 1943."

In other words, the parties here, both the plaintiff trustee and the defendant law firm, have recognized that there is no assignment here, and it can only be by virtue of an assignment that there would be any justification for a refusal by the trustee to pay the money out to its beneficiary.

Furthermore, your Honor, as to the guts of this thing, is there an assignment or not? Bearing in mind that the alleged agreement between the defendant law firm and Palomas antedated the trust agreement, what was there to assign at that time?

The Court: Wait a minute. You say the alleged assignment antedated the trust agreement?

Mr. Mellinkoff: That is correct. At the time this agreement, so-called, was made between Rasberry and Palomas, the only thing that was in existence at that time was this award that had been made in favor of Palomas by the American-Mexican Claims [18] Commission.



Now, as pointed out in our second memorandum, your Honor, if there had been an attempt to make any assignment of that claim, it would have had to be done in accordance with the provisions of Public Law 814, setting forth certain circumstances under which and procedures by which a claim under that award could be assigned. There was no assignment executed and none was intended.

Now, furthermore, as appears from the Baldwin affidavit, Mr. Rasberry himself participated in the draftsmanship in the drafting of the so-called trust agreement. Now, if at that time he had felt, and he had felt that his client recognized that there was an assignment to him of any portion of that award, it would have been a very simple matter to say that instead of 7/19ths to Security-First National and 7/19ths to Palomas, and 5/19ths to the plaintiff law firm, that Palomas' share would have been cut down and there would have been some of those 19ths going to defendant law firm.

That was a very easy matter to set up, but it was not set up because there is nothing in the conduct of the parties to show that an assignment was intended.

All of the checks that have come in up to the present moment, your Honor, have been made out either to Palomas alone, or to Palomas and its attorney. And if as the defendants now claim there was an assignment, what would have [19] been the necessity for any signature by Palomas on a check that was supposed to go to the defendant law firm?



The fact of the matter is that there was no assignment at any time, and these defendants know it, and it has only been reared at this time to give color, an attempt at color, to the claim of the right on the part of the trustee to interplead.

The Court: Now, you have said that the question involved is whether or not a trustee can interplead its beneficiary, and that may be the legal question involved. But how does this matter of whether there was an assignment enter into it?

Let's go back to the common insurance policy interpleader. An insurance company would ordinarily be protected to pay its named beneficiary. There has been no legal assignment. Somebody else makes a claim. What is the theory of interpleader? I am talking off the cuff now, because I haven't read your briefs, and I haven't read any texts on it. But it seems to me it rests on the common sense theory, why should there be litigation involving a stakeholder if somebody makes a claim on him? It doesn't make any difference whether the claim is good or bad. Let him off the hook, let him pay the money into court and let the two fellows that make claim to the money fight about it.

As I understand interpleader actions generally, it isn't [20] necessary that the party plaintiff show that somebody's claim is good; it is enough to show somebody makes a claim on him, somebody claims the money, has an interest in that situation.

Looking at the thing now, apart from statute and apart from anything else, but just common horse

sense, which in my opinion is the way a lot of cases ought to be decided, instead of getting too technical about these things, passing for the moment the power of the trustee to interplead his beneficiary, it seems to me that nobody could be hurt by an interpleader action even if there wasn't a valid assignment. The parties are before the court, here is a forum in which the Palomas Land Company and the Texas law firm can litigate a claim on this money.

Apparently you have something in mind which you hope will defeat the claim of the law firm. It is not necessary that you divulge that at this time. I don't think you would be going to this trouble unless you had something, what you consider to be a defense as to their claim of the money.

Mr. Mellinkoff: That is correct, your Honor.

The Court: But here is as good a forum as any to fight that out.

Mr. Mellinkoff: If your Honor please, I believe what your Honor has stated is indubitably the law as to matters affecting ordinary contracting parties, or the ordinary common, [21] garden variety of stakeholder who finds himself in the middle with two people making claims upon him, and some of the cases hold even though there is a contractual obligation to one party, if another party asserts a conflicting demand, that that in and of itself will not block the action in interpleader. However, your Honor, the situation is different with a trustee.

The Court: That is a point of law now. You have quoted Scott in your brief, I take it, some authorities on that point?

Mr. Mellinkoff: That is correct. That is the fundamental point of law involved.

The second point involved, and this also bears on the same thing: It is not enough sufficient to set forth the bare legal requirements of an action in interpleader to give an absolute right to the action of interpleader. If it be shown that the action is not brought in good faith, if it be shown that the person who is trying to bring the interpleader action is a wrongdoer insofar as one of the defendants is concerned, then that proposed interpleader falls.

Now, the case on that, which is cited, is the case of *Boice v. Boice*, 48 Fed. Supp., affirmed in—

The Court: Let's assume that is the law. Now how is the plaintiff, the surviving trustee, a wrongdoer, other than what you have already argued, breach of his trust agreement? [22] If your law is good on that trust theory, he might be breaching his trust agreement. But is he a wrongdoer in any other sense?

Mr. Mellinkoff: Yes, very definitely.

The Court: How?

Mr. Mellinkoff: As pointed out in the affidavit of Mrs. Metcalf, and as pointed out in the second memorandum of points and authorities, aside from this fact that he hadn't paid over this sum of over \$5,000, as I have been saying, the trustee some years ago, in 1947, when it received the so-called confidential letter at the same time it received another letter, and in the one letter, a copy of which was supposed to go to the beneficiary, there was a re-

quest for the two checks as a matter of convenience, without any claim of right, and in the second letter, a confidential letter, where it appeared that the defendant law firm was claiming some right under this thing, the trustee, again by its duty of loyalty, was bound to make a disclosure to its beneficiary, because the beneficiary had no notice that this defendant law firm claimed not only the right to be paid, but the right to an assignment or a lien upon these very funds, and this trustee at the moment it became aware of such a claim was under a duty, its duty of loyalty to its beneficiary, to say, "Look, beneficiary, here is what your trustee is trying to do." [23]

The Court: Now, wait. That spells out a nice argument.

Mr. Mellinkoff: Thank you, your Honor.

The Court: But I don't think the facts bear it out. What happened? Prior to this so-called confidential letter the plaintiff had apparently disbursed checks to Palomas and the attorneys jointly, hadn't they?

Mr. Mellinkoff: The first one was solely to Palomas.

The Court: Some time before this confidential letter there was one check in which the defendants were named, which meant their signature had to go on it.

Mr. Mellinkoff: That is correct.

The Court: Then the trustee gets this letter where the attorney says, "as a matter of conven-

ience." Well, now, you and I have practiced law, and we have had checks which belonged to our clients, where we had a contingent fee, and where we have as a matter of convenience suggested to the insurance company that the check be made to the client and the attorney. Why? So we would have some hold on that check and be able to get our fee. That is common practice. I do not see anything wrong in this letter that the attorney wrote. He says, "as a matter of convenience."

There is not even an assertion in there of a claim at that time.

Mr. Mellinkoff: Your Honor, this is precisely the [24] point. There were two letters of the same date, two letters of May 31, 1947, and the one in which this was claimed not as a matter of right, but just as convenience, that letter was supposed to have gone forward to the beneficiary. It appeared on the face of the letter: copy to Mrs. Letha L. Stephenson. But in the other letter, the confidential letter to the trustee, in which there was an indication of a claim of right, of an assignment, in that letter there was no indication that the beneficiary was notified, and the beneficiary was not notified.

The Court: That is what I am getting to. How was anybody hurt by the failure of the trustee at that time—Garfield, I guess, wasn't it?

Mr. Mellinkoff: Yes.

The Court (Continuing): —to notify the beneficiary? After all, a trustee only has to notify his



beneficiary on matters of some real moment. He doesn't have to write and tell his beneficiary of the weather. His beneficiary knew already that the attorneys were claiming some of this money. They had been named as the payee in one of the previous checks. How is there any breach, on this subject of wrongdoing by the trustee, under the theory that a wrongdoer can't interplead, how is there anything wrongful in the trustee failing to advise his beneficiary about this letter?

Mr. Mellinkoff: Simply this, your Honor: The vital [25] difference between an attorney claiming a right to be paid and an attorney claiming a lien or a mortgage, or whatever you want to call it, on specific funds.

In other words, an attempt on the part of the lawyer to take out of the hands of the client the question of payment to the attorney for the services, in which he can set up possible wrongdoing on the part of the attorney, or overreaching, or what, and an assertion on the part of the attorney that he, in fact, owns a portion of these moneys. In other words, the trustee has notice that the beneficiary's own attorney is claiming adversely to the beneficiary and says nothing to the beneficiary.

The Court: Even if that were true, I am not inclined to think that I would hold that to be wrongful conduct on the part of a trustee, even if the letter is read as a claim by the attorney that he had an interest in the money. So what? He claims an interest in the money. Do you mean a trustee



is guilty of misconduct if it doesn't then notify its beneficiary of that fact? That doesn't seem like misconduct to me.

Mr. Mellinkoff: On that, your Honor, if I might be permitted, I would like to read a short quotation from Scott on trusts, as follows:

“Chief Judge Cardozo, speaking for the New York Court of Appeals, in an often-quoted passage, [26] has said, ‘Many forms of conduct permissible in a workaday world for those acting at arm’s length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an hour the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the disintegrating erosion of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not conscientiously be lowered by any judgment of this court.’ ”

The Court: That is a very fine statement. That is undoubtedly the law. But apply that to these facts. How was there any breach of trust when the trustee failed to tell its beneficiary that there was a certain letter marked “Confidential,” in

which the attorneys, apparently, were trying to see that a separate check went to them for their part, which could only be done with the consent of your client, or that the check went jointly? [27]

Mr. Mellinkoff: Simply this, that the trustee thereby had notice, a definite notice, which its beneficiary did not have, that somebody else was making claims to the very funds that the trustee held for the beneficiary.

The Court: Do you mean to contend that the Palomas Company did not know at that time that the attorneys had a claim?

Mr. Mellinkoff: They did not know and never have known until the present action was started that there was any claim on the part of the defendant lawyers that they owned or had an assignment of a portion of those funds.

The Court: I am not concerned about that. It is conceded that the Palomas Company knew that the attorneys claimed some money due them for their services.

Mr. Mellinkoff: By way of payment, yes, your Honor.

The Court: That is on your argument of wrongdoing. What other do you have? You have the argument of violation of trust, and you have the argument of wrongdoing apart from violation of the trust, which might in itself be wrongdoing; do you have some other contention?

Mr. Mellinkoff: That is the contention, your Honor, except for the one final point, and that is

this: That under the terms of this trust the trust explicitly states that no expenses will be incurred without the prior written approval of the beneficiary; and there was no prior written approval [28] or authorization for this action, despite the statement to that effect in the verification of Mr. Baldwin, which is in error. There was no authorization for it, and under those circumstances there is no and can be no legitimate claim for attorneys' fee.

The Court: I see your point there. If you are right about that, wouldn't one answer to that be that attorneys' fees could be denied the plaintiff in interpleader?

Mr. Mellinkoff: I beg your pardon?

The Court: If you are right in that contention, wouldn't the solution to that be to deny the plaintiff any right to attorney fees on the ground that by the agreement he hadn't complied with the agreement?

Mr. Mellinkoff: That is correct.

The Court: Would that in itself prevent the interpleader?

Mr. Mellinkoff: Except a further indication of a violation of trust by a plaintiff.

If I understand interpleader correctly, your Honor, it is an equitable action, and the plaintiff seeking relief from a court of equity must come into equity with clean hands. And a trustee who blatantly goes contrary to the terms of his trust, does not come into a court of equity with clean hands, is in no position to ask relief.

The Court: How much time will you want on this? [29]

Mr. Butler: Perhaps a half hour, your Honor.

The Court: And you, Mr. Schuck?

Mr. Schuck: Just one minute. We are also defendants, your Honor. We are the law firm. I have just a comment that will take about a minute. Would you like to hear that first before the general discussion?

The Court: And you want a half hour. My point is I am wondering whether we could finish before 12:00, or whether you want some time this afternoon.

Mr. Butler: I think before 12:00 we will be finished.

The Court: I would like to adjourn about five minutes early. Let's hear from the law firm for a minute, and then your reply.

Don't be misled by my questions, counsel.

Mr. Schuck: I am not. I have had the experience before, your Honor.

May it please the court, on behalf of the defendant law firm, our position is simply this, that at this stage of the game we are not in on the merits of the case at all. It is simply a question of whether or not there has been a sufficient statement of an interpleader case here. It is true that in affidavits by my people as well as by the plaintiff's people, we did put in a substantial amount of material that goes to the merits, but that was done only because—at least as far as my side was concerned—only

because there is an affidavit by defendant Palomas in which there is an [30] outright denial that there was any assignment, and we felt we had to meet that by evidentiary material.

Now, insofar as the question before your Honor is concerned at this point, it is simply a question of whether or not there is a claim, proper claim, for interpleader.

As your Honor may have noticed, we have answered the complaint here, and we have admitted on behalf of the law firm to a right to interpleader in this case. We also have conceded that there is a right to reasonable attorney fees by the plaintiff. We request, however, that whatever discharge is entered, if your Honor so decides, it be limited to the amount of the payment in court, which I believe is the proper procedure in interpleader. The plaintiff, if he is discharged, that the discharge be limited to the sum of the amount deposited in court.

Getting to the general contentions of counsel, his essential position is that we have always taken the position consistently that there was no assignment, and further made the comment that we know it.

Well, that isn't quite right.

Also, he has taken the position that Palomas never knew that the defendant law firm made a claim of assignment.

Without going into all the details in the conduct of the parties, which is gone into in considerable detail in the affidavits, I wish to point out only one thing, your [31] Honor, which is a reference to cer-

tain income tax returns filed by defendant Palomas in the early stages.

The first payment that was made to defendant Palomas amounted to over \$177,000. As the affidavits show, both Marshall Stephenson, the president, and Mr. Rasberry, went to the bank together, they both instructed the bank to divide that fund 15 per cent to the law firm and the balance to Palomas, and the share that was paid to the law firm was over \$26,000. Palomas was required, of course, to report that on his income tax returns, and in the year 1944 made its sworn return to the federal government, and that return was signed both by Marshall Stephenson, the president, and by Letha L. Stephenson, who is Letha Metcalf now, and it stated regarding the \$26,000 paid to the defendant law firm:

“Payment made or to be made to Burges, Burges, Scott, Rasberry & Hulse upon receipt by Palomas Land and Cattle Company of cash upon account of the award, being a contingent interest assigned to them for legal services at the time the conflicting claims of the Security-First National Bank of Los Angeles were asserted — cash paid in 1943, \$26,555.38; total claim \$88,517.94.”

So it cannot be contended that Palomas did not know about the claim of assignment. [32]

I wish in that connection, also, to refer to the letters pointed out by Mr. Mellinkoff, the letter be-



ing Exhibit 10, that being the letter to Mr. Garfield, the trustee. Counsel read the second part of the second paragraph, but he did not read the first part:

“As you know, our firm is entitled to 15 per cent of the proceeds due Palomas Land and Cattle Company as attorney’s fees. \* \* \*”

That claim was made in the letter, copy of which went to Miss Stephenson, and was not asserted in the second letter, which is implicit in the request that the checks be made jointly payable.

Those are my only comments, your Honor. I fully feel that the merits of this matter are beside the point, except as they might go to a wrongdoing on the part of the trustee. The trustee in all matters fully complied with the requests made, and which were known to Palomas Land and Cattle Company. As a matter of fact, all these checks were made payable both to Palomas and the law firm, and jointly endorsed by both. And the mere fact that the trustee at one point made out two checks, rather than one, certainly to my mind is no evidence of any misconduct, but is evidence, to my mind, of proceeding exactly in line with prior practice and with the procedure as known by the Palomas Land and Cattle Company. [33]

Thank you, your Honor.

Mr. Butler: I represent Arthur D. Baldwin, who is not only surviving trustee under the trust agreement discussed this morning, but the survivor partner of a Cleveland law firm known as Garfield,

Baldwin and Vrooman, Garfield being the son of the late President, who himself died some six weeks ago. This is the law firm and these are the trustees whom defendant Palomas now characterizes as wrongdoers guilty of conduct which verges upon fraud.

Mr. Mellinkoff pointed out that we are here discussing, one, a motion to dismiss our complaint, and, two, his opposition to our order to show cause.

First as to the motion to dismiss. He brings it under Rule 12(b)(6) of the Federal Rules of Civil Procedure, which states that failure to state a claim upon which relief can be granted is properly subject to a motion to dismiss.

12(b)(6), of course, sets forth the common law general demurrer, and by his motion he admits the truth of the allegations in our complaint. He has stated that we have not pleaded an assignment, nor have we pleaded claims by the defendant law firm and defendant Palomas.

In paragraph IV of our complaint, as well as in V and VI, we have pleaded that the trustee has been subjected to crossfires between defendant law firm, on the one hand, and defendant Palomas on the other. We have pleaded the letter agreement [34] between defendant Palomas and defendant law firm, which predated the trust agreement. We have, in turn, pleaded the conduct between these parties for a period of six years from 1943 to 1950, conduct in which all parties acquiesced until two months ago.

Apart from that, in our complaint we have pleaded, I think, the requirements for interpleader which are set forth in Section 1335 of the U. S. Code Annotated. We have pleaded, one, that these adverse claimants have diverse citizenship, defendant Palomas being a corporation resident and citizen of the State of California, the defendant law firm being individuals named and being citizens of the State of Texas. The plaintiff, on the other hand, is a citizen of the State of Ohio.

We have triangular citizenship here, and clearly within the grounds of diverse citizenship under the interpleader act.

Further, we have pleaded and have deposited sums in excess of the sum of \$500.

Next, we have come within the interpleader act as to deposits of money to which people are making claims who may claim to be entitled to those sums.

There is no requirement in the interpleader act that these defendants have already made formal demand by way of institution of a law suit, or made other demands of such nature. It is sufficient if they may claim interests in these [35] funds which we hold as a disinterested stakeholder here.

Further, we have pleaded the deposit of these sums in the registry of the court.

As I understand the federal interpleader act, those are the four essential elements to maintain an action in interpleader.

As I read the cases discussing motions to dismiss of complaints in interpleader, I find the rule to be

universal that once the essential elements spelled out in the act have been pleaded, the right to relief in interpleader is absolute.

The Court: What do you say about this? Here your client is a trustee, he is bound by a trust agreement to do certain things, and among other things one is to pay money to a named beneficiary; why should he be entitled to interplead? Why shouldn't he be required to comply with the terms of his trust and pay out the money?

Mr. Butler: We should observe this trust agreement is not a classical agreement of inter vivos trust. As Austin Scott, at whose feet I had the privilege of listening in a course in trusts, says, this is not a classical declaration of trust. We don't have beneficiaries in the usual sense of the word. We have here businessmen, men who represented claimants to an award of the Mexican-American Claims Commission, which was granted out of the expropriation of land [36] in Mexico.

This man Baldwin and his law firm, from 1923 to 1943, litigated and pressed Palomas' claims to these moneys which were ultimately awarded. Raspberry, on the other hand, and Marshall Stephenson, president of Palomas, came to an agreement about further representation. Palomas was not, in all events, at one time in this litigation clearly entitled to sums here. As we have spelled out in our affidavits, this so-called trust agreement is in compromise and in settlement of litigation instituted by the Security-First National Bank of Los An-

geles, which claimed that this defendant Palomas had no right, title or interest to those sums which it has been receiving under this award.

These three parties, seeing that their interests would best be served by settlement of the Security-First National Bank suit, came together under this document, which for lack of a better phrase was entitled "Agreement of Trust." There Baldwin, Vrooman, and Garfield were named as the three trustees. They were to collect the money, deposit it in a trust account, and then disburse it according to the terms of the settlement they arrived at.

Thus, against that background you must project the term "trust," and we say and think that possibly much of the law of trusts has nothing to do in this instance; that it is, in fact, a sort of escrow or just a pure business arrangement. [37]

But apart from that, I have researched at some length the right of a trustee to bring an action in interpleader, first, the federal practice, and I have been successful in finding four cases where in trustees' trust agreements beneficiaries and third party strangers to the trust have litigated their claims in the Federal Court.

The Court: Are they cited in your brief?

Mr. Butler: They are. Security Trust Co. v. Woodward, in a Federal District Court, 73 Supp. 667. This was an action under the interpleader act by the Security Trust Company of Rochester against a beneficiary of the trust and his wife, claiming his interest in the trust. That is cited on



page 10 of my authorities. Over on page 11, I beg your pardon.

The Court: What is the name of it, again?

Mr. Butler: Security Trust Co. v. Woodward, page 11.

The Court: Very well.

Mr. Butler: In that case the defendant wife sought to have dismissed the complaint that the trustee under a classical declaration of trust had brought in the Federal District Court stating that it held moneys of the beneficiary husband to which the wife made claims pursuant to an alimony decree. The trustee there spelled out, as we have spelled out, the four essential elements to the interpleader action, and the court, speaking of the motion to dismiss, said those facts being established, being the facts which are essential [38] in interpleader, stakeholder, trustee, may maintain interpleader in a District Court of a district in which one or more of the claimants reside. There is thus alleged all of the requisites specified in the Federal Interpleader Act.

Apart from Security Trust Co., we also have *Blackmar v. Mackay*, in which contrary to Mr. Mellinkoff's statement a remainderman beneficiary objected to a suit in interpleader filed by a trustee under a classical declaration of trust. That beneficiary remainderman stating that the complaint had failed to state a cause of action, seeking to have it dismissed.

The court again pointed out: Plead the essential



elements of interpleader, and the right is absolute. Even in this case where the plaintiff is a surviving trustee of two *intervivos* trusts.

Those were the two federal cases precisely on the point we have here.

There are two others where a trustee was joined as a defendant in an action.

There are a wealth of State cases permitting a trustee to file an action in interpleader in a State Court, naming as defendants the beneficiary of the trust and law firms or attorneys who seek to subject the corpus of the trust to their claims for legal fees. In California there are three such cases. [39]

The Court: Where are they cited?

Mr. Butler: On page 12 of my brief. *Van Orden v. Anderson*, 122 Cal. App. 132; *Fox v. Sutton*, 127 Cal. 515; and *Sullivan v. Lusk*, 7 Cal. App. 186.

The Court: California law controls in this case on the matter of diversity of citizenship, doesn't it?

Mr. Butler: I have some thoughts on that, your Honor.

It would appear that the interpretation, possibly, of the letter agreement between defendant law firm and the defendant Palomas ought to be interpreted according to the law of Texas. However, the right of the trustee to bring the action in interpleader here would seem to be one which the Federal Courts are resolving out of the Federal Interpleader Act without regard to the interpleader practice in the State Courts. And in that connection—

The Court: But on the matter of substantive law on the right of the trustee to interplead his beneficiary, wouldn't that be decided under California law?

Mr. Butler: I think possibly not, your Honor. It would seem to me the Federal Interpleader Act itself establishing the forum spelling out the essential elements to the action has made the law, has embodied the substantive law in that section, and once pleading those things it would seem that you are absolutely entitled to relief, and the State substantive law is of no consequence. [40]

In the cases which I have read on the subject I have found no reference to that particular problem in the opinions of the Federal and the Circuit Courts.

The Court: Does the so-called trust agreement have a provision that the trustee shall not encumber the fund or run up any expenses on it, and so forth?

Mr. Butler: The trust agreement has a common provision that the trustee shall not incur expenses without the written consent of these hard-headed businessmen who entered into this settlement agreement.

We think, however, that ought not to bar—I believe you are referring to counsel's contention that we are not entitled here to attorney's fees—that provision in this trust ought not bar our right to attorney's fees.

It is elementary in trust law that the trustee cannot incur expenses which aren't proper and ap-

propriate to the preservation of the corpus and the rights of the parties thereunder.

Pointing to the opposition to the order to show cause and the affidavits that we have filed in support, I think the court will find there in the latter half the claims made by defendant Palomas and the claims made by defendant law firm, both of whom in their crossfire directed at us have stated that "You must pay me, and if you pay the other you will be subjected to a liability."

Again it is the threat of a law suit, the possibility of [41] being twice vexed, that is the basis for the action.

The Court: I follow you there. But do you have any authority to the effect that where a trust has a provision that the trustees shall not encumber the fund or incur expenses, any authorities squarely on this question of fees for interpleader as being an encumbering of the fund?

Mr. Butler: I have none in the federal practice, and I encountered none in the state practice, the usual rule being to grant the attorney fees.

In one case, *Warner v. Florida Trust Co.*, 160 Fed. (2d) 766, the court there sustained a \$5,000 fee to attorneys for the plaintiff, the court stating that was proper in that instance.

The Court: How much money was involved?

Mr. Butler: There was there involved, I think, somewhat over \$100,000.

We have here, of course, over one million and a half dollars involved in this total award made

by the government to these parties concerned under this trust agreement.

The Court: You don't argue, do you, that if you were entitled to a fee, that your fee would be gauged on moneys that had been previously paid?

Mr. Butler: No, your Honor, we are not making that argument now. Still due and owing, I think, is probably the sum of five hundred or six hundred thousand dollars. [42]

The Court: You are not going to contend that you are entitled to a fee on that, either, are you?

Mr. Butler: We are contending here that we are entitled only to reasonable attorney fees in view of the effort to which we have been put by these contending claimants.

The Court: Your fees would be based upon the total sum of \$99,000, I would think.

Mr. Butler: We have conceded that the fees ought not, probably, exceed \$500 in this instance. We would concede that to be a reasonable attorney's fee.

The Court: Fees for any matter in the future, there might be no argument. In the future the parties might come in and would agree as to how the money would be paid, and you would have no problem.

Mr. Butler: Correct, and we have had none in the past.

We are stating that where they have forced us to bring this action, after a period of six years acquiescence in a mode of conduct, in a pattern of

payment, where they have now forced us to come into court and ask for relief, we feel it unfair that we should bear the burden of attorney fees for moneys which either one or the other is going to get.

Further contentions have been made here that—we have now covered, I think, the motion to dismiss. I am referring now to page 7 and the excerpt from *Publicity Building Realty Corporation v. Hanegan*, 139 Fed. (2d) 583, the court pointing [43] out there:

“While we shall not upon this appeal, express any opinion as to the merits of this case, we consider it important that the usefulness of the statutory remedy of interpleader, which has been greatly liberalized by the Interpleader Act of 1936 and by Rule 22 of the Federal Rules of Civil Procedure, shall not be impaired by narrow and restrictive rulings which might prevent bona fide claimants, with meritorious claims to a fund deposited by a stakeholder, from securing an adjudication of their rights. . . .”

On page 5, speaking again of the merits asserted by these claims. Much that has been said so far has gone to the merits of the subject of equitable assignment. Stating that the defendant law firm has no assignment, the defendant Palomas made no assignment, that here isn't presently in issue. As the court pointed out in *Metropolitan Life Insur-*

ance Co. v. Segaritis, 20 Fed. Supp. 739, on page 5 of my brief:

“It thus becomes clear that the jurisdiction of this court to entertain an interpleader bill does not depend upon the validity or even bona fides of the claims of the respective defendants. It is obvious that in almost every case the claim [44] of one of the parties will ultimately be determined to be invalid.”

The claim of the law firm here might be later found by the court to be without merit. On the other hand, the course of conduct might show an equitable right to the law firm and the court will direct a sum be paid it. We are not concerned with what the merits are.

The Court: I get your point.

Mr. Butler: Next, the breach of duty and the disloyalty here. Mr. Scott has again been called upon in pointing out we have been disloyal.

The Court: Did Mr. Mellinkoff also study at the feet of Austin Wakeman Scott?

Mr. Mellinkoff: He did.

Mr. Schuck: I cannot claim that distinction for myself, your Honor.

Mr. Butler: We have started on page 9 and continuing on page 10 of my memorandum set forth what I deem to be the law regarding the assignment by a beneficiary of the trust of his interest in the corpus of the trust to third parties. It is clear that the beneficiary of the trust, Palomas, can assign any part of his interest in the trust to a



third party. It is further clear that the interest of the settlor-beneficiary Palomas can be reached by a creditor. This is not a spendthrift trust. [45]

On lines 9 to 14 of my memorandum on page 10 I have taken the liberty of paraphrasing slightly Mr. Scott from his book *Scott on Trusts*, page 1195, where he stated: Where the beneficiary of a trust transfers all or part of his interest therein and the trustee with notice of such transfer makes payment or conveys the trust assets to the transferor-beneficiary in accordance with the terms of the trust, the trustee is liable to the transferee in the amount so paid or conveyed to the beneficiary.

How apt that quotation is to our situation here.

Where the beneficiary Palomas transferred or is said to have transferred part of his interest in this trust to the law firm, and we, with notice of that transfer, and we have notice from everybody, convey the trust assets to Palomas in accordance with the terms of that trust agreement, we are liable to the law firm and the amounts so paid are conveyed to the beneficiary.

The cases cited under that support the proposition. Furthermore, Scott having rewritten the Restatement of Trusts, included the same point in comment (c) of Section 226. The authorities that have been cited in opposition to this order to show cause are of interest, in that *Boice v. Boice* is the sole authority that has been brought to the court's attention by defendant Palomas to show that interpleader will not lie in this instance because of unclean hands on the part of the [46] trustee.

Boice v. Boice was a Fed. Supp. case. A husband and his brother, the husband being in matrimonial difficulties, conveyed his property to his brother on an oral trust to hold and pay the income to the husband. The brother so held. The husband and wife later became reconciled and the wife entered into an agreement releasing any claims to that money that the trustee had held under this agreement, which was a very loose sort of thing. Later they became in difficulties again, and the wife repudiated her release. Now, in that case the wife went to two courts, one in Florida and one in New Jersey, the husband went to a Florida court, both of them seeking divorce, both seeking adjudication of property rights. This trustee conveyed everything he had to the husband, as much as he could get out of his hands. He meanwhile was restrained by order of a New Jersey court from further disposing of the trust assets, in a suit which had been brought by the wife, and he was therefore subject to the judgment of the court which ordered him to pay those assets he held to the wife pursuant to a decree of the court. He, five days later, after that judgment was given, came to the Federal Court with this money and attempted to make an interpleader. The court rightly pointed out that he had been subjected to the jurisdiction of a State Court, that he had been guilty of fraud as to the wife in participating in [47] fraudulent conveyance of assets by the husband to defraud her of her rights in the matrimonial property, and sent him away.

The Circuit Court when the case went up pointed out, one, there was no diversity of citizenship which enabled the Federal Court to entertain the action in the first place, because the wife and the trustee were both citizens of New Jersey, and it is clear under the Act the action couldn't have been entertained.

Furthermore, as to the subsection of Rule 22 there was not enough money in controversy which had been deposited in court, so the Circuit Court without pointing out the fraudulent wrongdoing, lack of equity, on the part of the trustee, simply dismissed it by saying the lower court had no jurisdiction to begin with.

They have cited one Georgia case. The Georgia case is rather interesting. The Georgia practice in interpleader is contrary to that of the Federal Courts. In Georgia no bills in the nature of interpleader are allowed, only strict bills. Accordingly, both claims must come out of a common source. And as the Supreme Court of Georgia pointed out in that case, that very vital element was lacking in the facts that were there presented to it.

Furthermore, the trustee in that case, no demand had ever been made upon him by either of the parties that he sought to interplead, no demands had been made upon him as [48] trustee.

Further, as the claims arose out of different instruments, the court stated it had no jurisdiction.

The Federal Act, on the other hand, expressly states that it makes no difference if the claims do

not come out of a common source, nor that they are adverse to one another, thus allowing bills in the nature of interpleader to be entertained in the Federal Court.

So that Georgia case has no application to our facts.

He pointed out the bona fide claims aspect here, and has cited to the court *Cyclopedia of Federal Procedure*. The footnote to the sentence which he has put forth in his brief on page 5, lines 25 and 26, of his additional memo of points and authorities, the footnote in the pocket part refers to *Massachusetts Mutual Life Insurance Co. v. Edner*, 73 Fed. Supp. 300.

We refer to that in our brief on page 6 or 7. And in that case the court said that the right to interpleader under the act is not dependent upon the good faith of both claimants or on the strength of their claims.

The next case that he has cited is *American United Life Ins. Co. v. Luckman*, 21 Fed. Supp. 39, in which case the Federal Court ordered interpleader between the parties.

In conclusion, he has brought up the point of Public Law 814 regarding our failure to give notice to the Treasury [49] of an assignment, and accordingly funds paid under the Mexican-American Claims Commission are not subject to assignment.

It is rather interesting to read the entire Act. The Act provides that where a claimant has assigned a part of his claim on a contingent fee basis

to attorneys, that the amount which he can so assign is 10 per cent of the award, and only in exceptional cases would the Commission entertain petitions to increase the amount from 10 per cent.

Now, in the face of our agreement the defendant law firm asserts to be assigned 15 per cent of the Palomas claim. It is perfectly clear why these parties did not go into the assignment arrangement contemplated by 814, in which case the Treasury would have paid out to the law firm 15 per cent on a treasury voucher and would have paid out to Palomas on a treasury voucher its share under the trust agreement less 15 per cent. It was because there was no jurisdiction in the Treasury to so make those payments.

These parties agreed upon 15 per cent. Once the money is out of the Treasury and in the trust accounts the claimant can do as it will with those funds, and we point out then that Public Law 814 is in no way of import in this case.

Apart from our contentions as to the attorney fees, and we have asked that attorney fees and costs be awarded which we think to be reasonable, we have incurred costs of some [50] \$33.12 in the action, and our attorney's fees of \$500. We think there is a clear line of authority in interpleader cases which award the party interpleading attorney fees which are reasonable in view of the risk entailed, the preparation, and the amount of effort which goes into the action.

I believe as the court reads our memorandum



that the amount of effort that we have put into this is going to be apparent, and we respectfully request that if the court is going to consider together the motion to dismiss and the order to show cause and make its judgment thereon, that (1) it has ample support in the authorities, and (2) that the attorney's fees ought to be allowed.

The Court: Do you have something new or further in rebuttal?

Mr. Mellinkoff: Yes, if I could speak for a moment, your Honor.

The Court: Yes.

Mr. Mellinkoff: Addressing myself to the last point made by the gentleman first, on the question of attorney fees, I would like your Honor to bear in mind that under this trust agreement this Cleveland law firm is in itself getting 5/19ths of this total award of over \$1,000,000, and perhaps that was some consideration for the statement in there that they would not incur any expenses without the [51] written approval of the trustee.

If your Honor please, in reference to Mr. Schuck's comments about the statements contained in these income tax returns, in the first place, we regard those as confidential matters which they have no right to disclose.

The Court: How did they get possession of them?

Mr. Mellinkoff: I don't know, your Honor. I presume it was because this trusted lawyer Raspberry was the attorney for the decedent's estate,



and presumably he might have had something to do during his lifetime in connection with the preparation of them.

The Court: I take it Rasberry is not a Harvard man?

Mr. Mellinkoff: As far as I am concerned the school would have nothing to do with him, sir.

We consider it a grave breach of a fiduciary duty for such matter to be even mentioned at this time. And, further, there is nothing that they have said to indicate that such a matter was ever brought home to the trustee, in any event.

Now, in reference to the argument last made, I should like to take just a moment, your Honor, to distinguish the cases on which the plaintiff here is relying to establish the right of a trustee to interplead his beneficiary.

I made the statement in opening that not a single one of the cases cited presents a case where a trustee against the objection of his beneficiary has been permitted to maintain [52] an action in interpleader.

The Court: What page are you referring to of his brief now?

Mr. Mellinkoff: I am now referring to the cases cited commencing on page 11. *Blackmar v. Mackay* is the first one cited, a case involving the Mackay trust, and in that case there is no controversy, insofar as appears from the opinion in 65 Fed. Supp. 48, which is the citation, there is no argument there, or a case where a trustee is opposed to a benefi-

ciary. It is simply an interpleader by a trustee to get an interpretation of whether or not certain provisions of the trust instrument create a reversion or a remainder. A New York court held it to create a reversion, a Nevada court had held it to create a remainder, and here was the trustee asking, "Tell me, does this money go to the settlor under a reversion or does it go to the other party as a remainder?"

There is nothing to show litigation as between trustee and beneficiary against the wishes of the beneficiary.

The next case cited is *United Building & Loan Ass'n v. Garrett*, and in that case I would like to call your Honor's attention to a quotation from the case at page 462:

"Answers were filed by Troy Garrett, as successor trustee, acting on behalf of the beneficiaries of the Declarations of Trust \* \* \*."

In other words, the interpleader action was not filed [53] by the trustee; the trustee, as is very proper, was sued as a defendant, and appeared acting for the beneficiaries of the trust.

In the case of *Warner v. Florida Bank and Trust Co.*, which is the next case cited, to quote from the case itself at page 769:

"The suit thereupon became a contest between the life beneficiary and the remainder beneficiaries, the former asserting the invalidity of the trust, the latter, its validity."

There was no trustee involved in the picture for the reason that the trustee had died, and suit was brought trying to bring in the trustee in interpleader, and in that case the successor trustee answered refusing to qualify as trustee and refusing to defend as trustee. So there was no trustee in the case at all.

In *Security Trust Co. v. Woodward*, which is the next case cited, the beneficiary answered and cross-complained, and there is nothing in the case at all, therefore, to show that the beneficiaries in any way complained to the action, and that does not conflict in any respect with what I said before, that no cases cited were cases where over the opposition of the beneficiary the trustee has been permitted to maintain his action.

The cases cited on page 12, the great majority of them [54] are not trust cases at all, but cases involving executors and administrators. That goes for *Fox v. Sutton*, *Michigan Trust v. McNamara*, *Mulford v. Stender*, *Repetto v. Raggio*, *Steele v. First National Bank of Mobile*, and *Cobb v. Daughtry*. And as pointed out in the *Steele* case, the *Steele* case at page 355 says the administrators are primarily concerned with charges against the estate and the proper collection of assets, and they are interested for their own protection in the proper distribution of funds involved.

In other words, there is not the same situation as between trustee and beneficiary.

In the *Van Orden* case, *Van Orden v. Anderson*,

cited at the top of the list as being a California authority on that, in that case the plain fact is that the trust had terminated and there was no trust issue involved.

That statement appears at page 141 of the opinion, where the court says, “\* \* \* nevertheless where the purposes of the trust have been accomplished, or the trust otherwise terminated (which was clearly the situation here) \* \* \*.”

So there is no trust there.

In *Sullivan v. Lusk*, the next California trust case cited, the trust had likewise terminated. The trustee had been allowed fees for attorneys, and the trustee brought interpleader there to decide which of two attorneys was entitled to an attorney fee after the trust was already [55] terminated and the funds distributed.

In *Leber v. Ross*, there was a situation simply where an attorney who was the escrow agent as between purchaser and vendor in carrying out his escrow instructions found himself faced with an execution issued on his funds, and he therefore interpleaded to ask what he should do in face of the execution.

In other words, there is not a single case cited, your Honor, in which the right of a trustee as against his beneficiary and against the wishes of the beneficiary is entitled to interplead the beneficiary and a stranger to the trust.

The Court: Submitted?

Mr. Butler: Does the court care for a supple-

mental memorandum on the attorneys' situation involved here?

The Court: I don't think so. If I do I will ask for it.

Mr. Butler: Thank you.

Mr. Schuck: If your Honor has any question on that income tax situation, I will argue that. I have never yet had any trouble subpoenaing income tax returns, and as far as attorney-client relationship is concerned, once there is a controversy between the attorney and the client, relative to a matter involving their agreement, certainly there is no breach of the relationship in disclosing any information bearing on the subject. I don't see where that has much [56] to do with this matter, though.

The Court: It was an interesting argument. I am going to take it under submission, and I want to look at these cases. It would not be fair to pass on this, although I have learned a good bit from this argument. Mr. Mellinkoff very frankly stated that it is a question of whether or not a trustee may interplead his beneficiary, and I think I will probably find out that that is the issue in the case, from what I have heard here today.

I regret that I was not one of the fortunate ones who had a course under Austin Wakeman Scott. I had a course under him, but it was only procedure. I did not get to such topics as trusts, as a first-year law student at Harvard.

I will try to pass on this very shortly.

(Whereupon, at 12:00 o'clock noon, court adjourned.) [57]

## CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 8th day of September, A.D. 1950.

/s/ SAMUEL GOLDSTEIN,  
Official Reporter.

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[Title of District Court and Cause.]

## CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 223, inclusive, contain the original Complaint for Interpleader; Temporary Restraining Order and Order to Show Cause; Summonses and Returns of Service; Stipulation and Order Extending Time to Plead, etc.; Notice of Motion to Dismiss; Order Shortening Time; Affidavit of Roland Rich Woolley in Opposition to Order to Show Cause; Affidavit of Letha L. Metcalf in Opposition to Order to Show Cause; Stipulation and Order



Exetending Time to Plead etc.; Answer of Defendants Louis A. Scott, et al; Memorandum of Points and Authorities of Defendants Scott, et al, in Opposition to Motion to Dismiss and in Support of Order to Show Cause; Affidavit of John L. Rasberry in Opposition to Affidavits of Roland Rich Woolley and Letha A. Metcalf in Opposition to Order to Show Cause; Statement of Reasons and Memorandum of Points and Authorities in Opposition to Motion to Dismiss Complaint for Interpleader; Affidavit of Arthur D. Baldwin in Support of Order to Show Cause; Stipulation Extending Time and Continuing Hearing on Order to Show Cause and Motion to Dismiss; Supplemental Memorandum of Points and Authorities in Support of Motion to Dismiss and in Opposition to Order to Show Cause; Additional Affidavit of Letha L. Metcalf in Opposition to Order to Show Cause; Stipulation Extending Time to File Objections to Findings of Fact, Conclusions of Law, Permanent Injunction and Orders; Objections to Proposed Findings of Fact, Conclusions of Law, Permanent Injunction and Orders; Plaintiff's Reply to Defendants' Objections to Proposed Findings of Fact, Conclusions of Law, Permanent Injunction and Orders; Letter dated July 21, 1950, to Judge Carter from Overton, Lyman, Prince & Vermille; Findings of Fact and Conclusions of Law; Permanent Injunction and Order Directing Interpleader, Discharging Plaintiff, and Allowing Attorney's Fees, Expenses and Costs; Notice of Appeal and Designation of Record on Appeal and full, true and correct copies of minute orders entered June 19 and

22 and July 25, 1950, which, together with Reporter's Transcript of Proceedings on June 19, 1950, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$3.20 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 19th day of Sept., A.D. 1950.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

[Endorsed]: No. 12692. United States Court of Appeals for the Ninth Circuit. Palomas Land and Cattle Company, a Corporation, Appellant, vs. Arthur D. Baldwin, as Surviving Trustee under a Certain Agreement of Trust dated October 29, 1943, Louis A. Scott, John L. Rasberry and James F. Hulse, Partners doing business under the firm name and style of Burges, Scott, Rasberry & Hulse, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 21, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Circuit Court of Appeals for  
the Ninth Circuit

No. 12692

PALOMAS LAND AND CATTLE COMPANY,  
a Corporation,

Appellant,

vs.

ARTHUR D. BALDWIN, as Surviving Trustee  
Under a Certain Agreement of Trust Dated  
October 29, 1943; and LOUIS A. SCOTT,  
JOHN L. RASBERRY and JAMES F.  
HULSE, Partners Doing Business Under the  
Firm Name and Style of Burges, Scott, Ras-  
berry & Hulse,

Appellees.

APPELLANT'S STATEMENT OF POINTS ON  
WHICH APPELLANT INTENDS TO RELY  
ON APPEAL AND DESIGNATION OF  
THE RECORD MATERIAL TO THE CON-  
SIDERATION THEREOF

Comes now the Appellant Palomas Land and  
Cattle Company, a corporation, pursuant to Rule  
19 (6) of the Rules of the United States Circuit  
Court of Appeals for the Ninth Circuit and makes  
the following:

## I.

Statement of Points on Which Appellant Intends  
to Rely on Appeal

1. The District Court should have held as a matter of law that the plaintiff, as trustee, cannot compel the Appellant beneficiary, which claims under the trust, to interplead with a stranger to the trust, and the District Court should have dissolved the temporary restraining order, and dismissed the action.

2. The District Court should have held as a matter of law that under the terms of the trust agreement, the plaintiff trustee was prohibited from charging the trust res with expense without the consent of Appellant beneficiary, and the District Court should have denied plaintiff attorney's fees and costs.

3. The District Court erred as a matter of law in making the following orders and in making each and all of the conclusions of law upon which said orders are based:

(a) Enjoining and restraining Appellant, its agents, attorneys, servants and representatives from taking, maintaining and prosecuting against plaintiff any proceeding in any State or Federal Court based upon any of the claims of Appellant to the sum of \$5,488.11 deposited by plaintiff in the registry of the District Court;

(b) Ordering Appellant to interplead and litigate with the other defendant, Appellant's

claims and rights to said sum of \$5,488.11;

(c) Allowing and directing plaintiff's attorney's fees and costs to be paid out of said sum of \$5,488.11; and

(d) Retaining jurisdiction of the cause to determine the rights of Appellant and the other defendant in and to the balance remaining of said sum of \$5,488.11.

4. The evidence does not support and the District Court erred as a matter of law in making each and all of the following Findings of Fact:

(a) That the other defendant contends that the letter agreement dated August 6, 1943, constituted an assignment to it cognizable either in law or in equity, of 15% of all sums payable to defendant Palomas pursuant to the award and trust agreement;

(b) That the aforesaid contention of the other defendant is tenable;

(c) That plaintiff does not and never has claimed any right, title or interest in and to the sum of \$5,488.11 deposited in the registry of the District Court;

(d) That the claims of the other defendant have been asserted in good faith;

(e) That plaintiff could not safely determine for himself which claim is right;

(f) That plaintiff could not pay said moneys

to Appellant without incurring risk of liability to the other defendant;

(g) That plaintiff at the time of the commencement of this action was and since has been in danger of being harassed and damaged by the costs of litigation and risk of liability in two actions on a single obligation;

(h) That plaintiff as trustee did not commit any breach of trust by reason of the withholding of disbursement of said sum of \$5,488.11 and the deposit of the same in the registry of the District Court; and

(i) That plaintiff did not violate any fiduciary duty imposed upon him by said trust agreement by reason of the withholding of disbursement of said sum of \$5,488.11 and the deposit of the same in the registry of the District Court.

## II.

### Designation of the Record Material to the Consideration of the Appeal

The entire certified Record on Appeal including the transcript of proceedings.

ROLAND RICH WOOLLEY, and  
DAVID MELLINKOFF,

By /s/ DAVID MELLINKOFF,  
Attorneys for Appellant.



State of California,  
County of Los Angeles—ss.

Isabel E. Dyson, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county as aforesaid; that affiant is over the age of eighteen years and is not a party to the within above-entitled action; that affiant's business address is 211 S. Beverly Drive, Beverly Hills, California, that on the 29th day of September, 1950, affiant served the within Appellant's Statement of Points on which Appellant Intends to Rely on Appeal and Designation of the Record Material to the Consideration Thereof on the Appellees in said action, by placing two true copies thereof in an envelope addressed to the attorneys of record for said Appellees at the office address of said attorneys as follows:

Lawler, Felix & Hall, Wm. T. Coffin and  
Edward T. Butler,  
800 Standard Oil Building,  
Los Angeles 15, California.

Overton, Lyman, Prince & Vermille and  
Carl J. Schuck,  
733 Roosevelt Building,  
Los Angeles 17, California.

and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at the city where is located the office of the attorneys for the person by and for whom said service was made.

That there is a delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ ISABEL E. DYSON.

Subscribed and sworn to before me this 29th day of September, 1950.

[Seal]      /s/ DAVID MELLINKOFF,  
Notary Public in and for  
Said County and State.

My Commission Expires Jan. 23, 1954.

[Endorsed]: Filed October 2, 1950.